

1 Tuesday, 12th June 2007

2 (10.04 am)

3 MR BOYLAND: Good morning, this inquiry is resumed. I
4 trust that everybody had a good weekend. Just
5 the usual reminder, please, for everybody to sign
6 the attendance sheet, and that mobile phones
7 should be switched off or to silent while the
8 inquiry is in progress. Any procedural matters
9 before we carry on?

10 Mr Humphries, I think when you introduced your
11 witness Mr Rhodes I think you mentioned that you
12 were taken through his rebuttal proof. You did
13 not do so and I am happy for you not to do so,
14 but I just wondered if that was a deliberate
15 omission or an accidental one?

16 MR HUMPHRIES: A deliberate ploy, sir. No, I am not
17 that devious. Mr Rhodes, was there anything on
18 the rebuttal you want to cover? I think you
19 covered things in the answers you gave me.

20 MR RHODES: Yes, there was nothing additional. Thank
21 you.

22 MR HUMPHRIES: But thank you, sir, for giving me the
23 opportunity.

24 MR BOYLAND: Thank you. Mr Hill.

25 MR HILL: Sir, I have not dared touch the microphones

1 in front of me. One of them is lying on the
2 table. I do not see the shorthand writer here
3 and I wonder if I can -- oh, it is all being
4 taped today, is it? Does that mean I can ignore
5 this one which is lying on the table? Very well.
6 I am sure every week will change.

7 So, just on the list I circulated, I did, as
8 you know, circulate a list at the end of Friday.
9 We thought at that stage we might have an hour's
10 cross-examination of the list. It is okay. This
11 morning intended to be supplementary to that
12 list. As I seeded my only copy of the Friday
13 list to Mr Osbourne, I am not sure whether there
14 is any overlap on that but I hope that has not
15 caused any inconvenience. I am also not entirely
16 sure that I have accurately recorded every volume
17 of the environmental statement we may need to
18 refer to, but I hope the environmental statement
19 for this application is generally within reach.

20 MR BOYLAND: That is fine. Clearly, it helps at least
21 to have the bulk of the documents out, but when
22 we need to find that, that is no problem.

23 MR HILL: Thank you very much. Now, Mr Rhodes, good
24 morning.

25 MR RHODES: Good morning.

1 MR HILL: I have not put up a cross-examination
2 estimate down on my sheet.

3 MR RHODES: A good ploy.

4 MR HILL: It is a number of years since I last cross-
5 examined Mr Rhodes. I think we were then
6 concerned with an out of centre retail
7 development he was promoting and I simply cannot
8 recall how smooth the passage of cross-
9 examination was. So, sir, if you are interested
10 in a broad indication, I would say it is roughly
11 three and a half to four and a half hours. I
12 hope that is helpful, but we will see how we get
13 on.

14 MR BOYLAND: Thank you.

15 MR JOHN RHODES (recalled)

16 Cross-examination by MR HILL

17 MR HILL: Good morning then, Mr Rhodes.

18 A. Good morning.

19 Q. Now, you tell us from your proof of evidence that
20 you first instructed on this matter in 2004.
21 That is right, is it not?

22 A. It is, yes.

23 Q. And that immediately tells us that you were not
24 involved in the 2001 planning application or the
25 2003 planning permission?

1 A. That is correct.

2 Q. That is also on the record. You say that you
3 have been closely involved with the preparation
4 of the G1 proposals. Now, my client officers who
5 have been closely involved with all stages of
6 this application, have of course not been dealing
7 with you, have they, but with a whole variety of
8 in-house planning officers at BAA over the past
9 year?

10 A. That is correct, yes. The day-to-day preparation
11 and conduct of the application was handled by
12 STAL -- Stansted Airport Limited's planning team
13 -- in-house.

14 Q. I think it is right, is it not, that you had your
15 first contact with the Uttlesford officers just a
16 few months ago at one of the meetings that had
17 been set up in the run up to this inquiry?

18 A. That is correct.

19 Q. Yes. So, all correspondence and meetings in the
20 period leading up to the termination of the
21 application certainly had been directly with the
22 STAL team?

23 A. Yes, the STAL planning team.

24 Q. Can I just understand how involved you had been
25 with the day-to-day issues surrounding the

1 application? Have you been consulted on a daily
2 basis? Weekly basis? A monthly basis? How has
3 it worked?

4 A. As and when necessary. Over the same period I
5 have been involved with the G2 project as well.
6 It has taken -- together, G1 and G2 have taken a
7 significant proportion of my time since being
8 instructed in 2004 but my involvement with the
9 preparation of the G1 application was in the
10 nature of reviewing a number of the documents.

11 Q. Reviewing a number of the documents?

12 A. Discussing the approach to the application.
13 Generally involved in higher level discussion.

14 Q. That is helpful. That I think explains the
15 extent to which you have been, as it were, the
16 public face of the planning arm of BAA over the
17 last year.

18 A. Yes, and of course I think you are aware that my
19 office and, therefore, my responsibility related
20 to the preparation of the planning statement that
21 went with the application.

22 Q. Indeed so, yes, that is the case. That is
23 helpful because I have to ask you a number of
24 questions that relate to matters in which you
25 were not directly involved, because there is not

1 anyone from the BAA planning team, as it were --
2 STAL planning team -- to ask them of.

3 You tell us that you appeared at the RSS EIP
4 last year and now you have come, as it were, to
5 present the case at this inquiry in a similar
6 way. Is there any particular reason why the
7 planners who have actually dealt with the
8 application at BAA, are not providing evidence to
9 the inquiry?

10 A. I think it is principally a matter of experience.
11 I am more experienced in the inquiry process, but
12 in terms of day-to-day relationships with the
13 district council, STAL planning team has a close
14 and detailed working relationship with the
15 council, and it was always intended that for the
16 inquiry STAL and BAA would source a number of
17 consultants to assist the preparation of the
18 case.

19 Q. That is very helpful, thank you. Now, can we
20 just turn back in time to the submission of the
21 planning application and the steps that led to
22 its submission, and I hope on last Friday's list
23 we had CD23, 24 and 24.1.

24 MR BOYLAND: We have them now anyway, Mr Hill.

25 MR HILL: Right. The first document effectively in

1 the series is CD23. If we look at the core
2 documents list under G1 pre-application
3 documents, the CD23 document for those who do not
4 have it is the scoping report which BAA Stansted
5 prepared dated July 2004. You have that?

6 A. Yes.

7 Q. Was that a document in which you were involved?

8 A. No.

9 Q. Did that pre-date your joining the team?

10 A. It would have been at around a similar time.

11 Q. Very well. We see printed on the front of the
12 document "Town and County Planning Environmental
13 Impact Assessment Regulations 1999" and this a
14 consultation on studies proposed to consider the
15 environmental effects of further growth of
16 Stansted within its existing single runway
17 capacity. Yes? And as I take it, there is
18 certainly no dispute at this inquiry that the
19 development before the inspectors is EIA
20 development?

21 A. No dispute at all, no.

22 Q. If we just turn up the regulations which I did
23 err this last week; it is perhaps inappropriate
24 to burden the documents list with this hoping
25 that everyone would have their own copy. Just

1 turn up the 1999 regulations. It is helpful just
2 to look at the definitions in regulation 2. So,
3 this is the Town and Country Planning
4 Environmental Impact Regulation 1999. Regulation
5 2 is the interpretation part of the document and
6 we see under EIA development:

7 "It means development which is either (a)
8 Federal 1 development."

9 We are not Federal 1 development, are we?

10 A. No.

11 Q. Therefore this is captured because we are
12 schedule 2 development: likely to have
13 significant effects on the environment by virtue
14 of factors such as its nature, size or location.

15 A. Yes.

16 Q. So, we can agree that the proposals before the
17 inspector are likely to have significant effects
18 on the environment?

19 A. I think we can agree that as a matter of good
20 practice, it was very sensible for STAL to assume
21 from the start that a full environmental
22 assessment was an appropriate thing to do. This
23 is a significant expansion of airport capacity
24 and it is right that the issues are fully
25 investigated. Whether STAL said to itself at the

1 beginning there are likely to be some significant
2 environmental effects here or not, I do not know.

3 But I imagine that it was a very short
4 conversation within STAL to determine whether or
5 not to carry out an EIA.

6 Q. I was hoping we would not stall on this point,
7 Mr Rhodes. It is an EIA development because it
8 is a schedule 2 development: likely to have
9 significant effects on the environment by virtue
10 of factors such as its nature, size or location.
11 It is, therefore, by definition, a development
12 likely to have significant effects on the
13 environment, is it not, by definition?

14 A. I am not particularly keen to agree that with
15 you.

16 Q. You may not be particularly keen to agree it, but
17 it is right, is it not?

18 A. All right, I do not agree it with you.

19 Q. You do not agree it?

20 A. I do not agree that that is the reason that the
21 environmental assessment was undertaken.

22 Q. Why was it undertaken?

23 A. I have just explained why it was undertaken.

24 Q. Well, you have not explained it very well. Why
25 was it undertaken, Mr Rhodes, if it was not for

1 that reason?

2 A. It is a significant expansion of airport
3 capacity. I think STAL would have immediately
4 anticipated significant criticism if it had not
5 carried out an environmental assessment. It is
6 quite usual for applicants to volunteer to carry
7 out EIA development in order to ensure that all
8 impacts -- whether they are going to be
9 significant or not -- are properly examined. I
10 do not think we can assume from the start of the
11 process what the conclusion of the process is
12 going to be.

13 Q. No, well, I have not suggested that that is
14 right. What I have suggested -- and it seems to
15 me it is a statement of the blindingly obvious --
16 that the development before the inspectors is, by
17 definition, likely to have significant effects on
18 the environment, and nowhere in the environmental
19 statement does it suggest, does it, Mr Rhodes,
20 that you are only performing the exercise of
21 environmental assessment as a favour to the
22 district council?

23 A. No.

24 Q. In fact, you do not believe that it is likely to
25 have significant effects. I will not find that

1 caveat expressed anywhere within that ...

2 A. No, I am not saying that to you either. What I
3 am saying to you is, as a matter of good
4 practice, it was obvious that the application
5 should be accompanied by environmental
6 assessment.

7 Q. Obvious because you would not win the argument
8 about whether it was EIA development, would you?

9 A. I doubt it even crossed STAL's mind to try to
10 advance that argument. It is a significant
11 application which should be accompanied by EIA.

12 Q. We can see what the statutory context for that
13 is in the regulations and I will make submissions
14 accordingly.

15 Now, do you have the circular to hand?

16 A. The EIA circular?

17 Q. The environmental assessment circular.

18 A. I do not think I do.

19 MR BOYLAND: This is circular 2 of 99?

20 MR HILL: That is right, yes. We will see, shall we,
21 whether it was added to the list that went
22 around? I am sorry if it did not reach you.

23 MR HUMPHRIES: These are some of the people that it
24 really does need to reach ...

25 MR HILL: I know.

1 MR HUMPHRIES: ... because Mr Rhodes is the witness. If
2 you give us a moment, we can send someone
3 upstairs.

4 MR HILL: Let us just pause for a moment and see if it
5 can be obtained. If you have got the
6 encyclopaedias there, I think it is volume 5. I
7 think volume 6 starts from 2000, does it not?
8 So, do you have this?

9 MR BOYLAND: It is much easier to work from the
10 originals rather than ...

11 MR HILL: That is what I am doing, sir. Mr Rhodes,
12 shall we proceed and see -- if there is a problem
13 you can immediately say, "Sorry, I cannot
14 continue without the document in front of me"?

15 A. That would be fine, thank you.

16 Q. Circular 2 of 99 which you are, I know, very
17 familiar with. Paragraph 46, to set the scene --
18 this is under the heading "applying the guidance
19 to individual development":

20 "In judging whether the effects of a
21 development are likely to be significant, local
22 planning authorities should always have regard to
23 the possible cumulative effects with any existing
24 or approved development. There are occasions
25 where the existence of other development may be

1 particularly relevant in determining whether
2 significant effects are likely or even when more
3 than one application for development should be
4 considered together to determine whether or not
5 an EIA is required."

6 That is the preamble. Underneath that there
7 are two subheadings. First is "multiple
8 applications"; plainly not in that category. The
9 second is "changes or extensions to existing or
10 approved development" and we plainly are in that
11 category. Are you familiar with that paragraph
12 in general terms?

13 A. Broadly, yes.

14 Q. It is that second subheading that I really wanted
15 to canvas with you very briefly.

16 "Development which comprises a change or
17 extension requires EIA only if the change or
18 extension is likely to have significant
19 environmental effects.

20 "This should be considered in the light of the
21 general guidance in this circular and the
22 indicative thresholds in annex A, however, the
23 significance of any effects must be considered in
24 the context of the existing development. For
25 example, even a small extension to an airport

1 runway might have the effect of allowing larger
2 aircraft to land, thus significantly increasing
3 the level of noise and omissions. In some cases
4 repeated small extensions may be made into
5 development. Quantifying thresholds cannot
6 easily deal with this kind of incremental
7 development. In such instances it should be
8 borne in mind. Thresholds in annex A are
9 indicative only. Expansion of the same size ..."

10 Has that reached you?

11 A. Thank you.

12 Q. Good.

13 "Expansion of the same size as a previous
14 expansion will not automatically lead to the same
15 determination of the need for an EIA because the
16 environment may have altered since the question
17 was last addressed."

18 So, there are a number of themes in that
19 passage that bear upon this case, are there not,
20 and I am sure that BAA and STAL would have taken
21 this into account, would they not, in reaching
22 their view that an environmental statement was
23 required?

24 A. I doubt they did, to be frank.

25 Q. You doubt they did?

1 A. No, and that they -- STAL undertook an
2 environmental statement for the previous
3 application which involved a similar increment.
4 That became a document that was important in the
5 application. It was amended and discussed
6 closely with officers. I doubt it even, as I
7 said, crossed their mind not to submit
8 environmental statement. I certainly was not
9 party to any discussion about, well, is it really
10 going to have significant environmental effects?
11 Do we really have to do it? I do not recall any
12 conversation of that nature as a matter of good
13 practice.

14 STAL took a decision, I suspect very quickly,
15 that EIA should be undertaken.

16 Q. Very quickly, yes. I am sure it was very quick.
17 That, nonetheless, remains the context in the
18 circular for the decision which had to be taken,
19 whether or not STAL took any notice of the
20 circular advice.

21 Now, can we look then, please, from those
22 documents to the CD23 document which I referred
23 to a moment ago? This is the scoping report that
24 was issued prior to your having any direct
25 involvement in the matter, but it is the first

1 document in the chain. Page 2, please. This
2 introduces the position from the standpoint of
3 BAA and explains what is proposed. Section 1:
4 introduction. One needs look perhaps to the
5 bottom of that central column to see that the
6 context that was being put forward by BAA at that
7 time:

8 "Forecasts indicate that 25 MPPA may be
9 reached during 2006."

10 That, of course, did not happen, did it?

11 A. No.

12 Q. And if one looks to the next column -- this is
13 the central paragraph in the right-hand column:

14 "This report starts the planning process and
15 its purpose is to formally consult on the range
16 of environmental studies required to assess the
17 environmental impacts of this next phase of
18 Stansted's growth."

19 So, setting to establish the range of
20 environmental studies. Again, a perfectly proper
21 approach.

22 And then turn onto page 10 of the document.

23 We can see there at table 1:

24 "The studies to be undertaken by specialists
25 appointed by STAL to identify and analyse the

1 environmental impacts of the airport growing to
2 around 35 MPPA and the mitigation measures that
3 may be required to deal with them."

4 Then the studies are then set out 1-16 on the
5 table in the centre part of the page. Yes?

6 The next page we have a heading
7 "(8) Mitigation" and here we read:

8 "During the planning process and when the
9 results of the studies referred to in this report
10 are known, STAL will consider the need for
11 commitments necessary to control and mitigate any
12 adverse effects of the development and, where
13 possible, improve it for the benefit of the
14 community."

15 So, STAL will be considering the mitigation,
16 yes?

17 A. Yes.

18 Q. If we could just turn back to the circular 2 of
19 99 and paragraphs 81 and 86. This is under the
20 general heading "preparation and content of an
21 environmental statement", general requirements is
22 it is the applicant's responsibility to prepare
23 the environment statement. That is right, is it
24 not?

25 A. Yes. Sorry, which paragraph?

1 Q. Paragraph 81.

2 A. Thank you. Yes.

3 Q. And again 86. It is the developer's
4 responsibility to prepare the ES so there is no
5 doubt whatsoever about upon whose shoulders the
6 burden rests for completing the environmental
7 impact assessment exercise, correct?

8 A. Correct.

9 Q. We know so far as agreeing the scope of the
10 environmental statement is concerned, the
11 applicant may request a scoping opinion from the
12 planning authority pursuant to regulation 10.

13 A. Yes.

14 Q. We do not need to look at that. That was done in
15 this case and we have got at CD24 the scoping
16 opinion. I wonder if you could just take that
17 up. Do you have that?

18 A. I am sorry, I have got 24.1. I need 24, do I?

19 Q. You will need 24.1 in a moment, but you need 24
20 before you get to 24.1. 24 is the scoping
21 opinion; 24.1 is BAA's response to it. That was
22 certainly on my list.

23 A. It was and I apologise if I have lost it.

24 Q. Perhaps you can be rescued by the extensive team
25 that sits to your left. Again, shall I press on

1 and if you find yourself in trouble, please stop.

2 A. Please do, yes.

3 Q. This is a document structured under a number of
4 headings. It is arranged in tabular form. Left-
5 hand side of the page "issue" and then right-hand
6 side of the page "opinion". Fairly familiar
7 conventional approach. The first series of
8 issues and opinions have the subheading
9 "general". You may be able to pick that up from
10 CD24.1 which has the same structure.

11 A. Yes.

12 Q. If we look at page 3 of the scoping opinion under
13 the heading "general" we find the last question
14 under the heading "general" was:

15 "Will the studies cover mitigation as well as
16 an assessment of the impact?"

17 Then we see the opinion:

18 "The EA needs to predict impacts, evaluate the
19 significance of the impacts, consider mitigating
20 measures and their effectiveness, and identify
21 methods of monitoring residual impacts and
22 mitigating measures."

23 So, that was the opinion. It was plain, was
24 it not, on the face of the scoping opinion that
25 the ES should address mitigation? A specific

1 question with a specific answer, correct?

2 A. Yes.

3 Q. If we look at CD24.1 which you have in front of
4 you.

5 A. Yes.

6 Q. And I think you have to turn it upside down to
7 get the right page -- page 4 of 21 -- one has the
8 last question there; the question of the opinion,
9 and then the BAA response:

10 "In accordance with the EIA regulations the
11 EIA will predict the effects of the proposed
12 development on the environment and, where
13 required, consider appropriate mitigation
14 measures to prevent, reduce and, where possible,
15 offset any significant adverse effects."

16 So, there is BAA happily agreeing to shoulder
17 the burden for proposing appropriate mitigation
18 measures

19 A. Yes.

20 Q. The next stage in the sequence of events is the
21 letter supporting the planning application which
22 I have as CD1. Although it is not immediately
23 obvious that it is contained in the CD1. One has
24 to filter the document to extract the letter.
25 You may have yours arranged in a different way.

1 A. I have the letter, yes. It is the letter of
2 26th April?

3 Q. Indeed so, sir, yes. It is I think the covering
4 letter that went with the application. Would you
5 have a hand in the drafting of that, Mr Rhodes?

6 A. I did, yes.

7 Q. We see in that on page 3 of the letter of
8 26th April at more or less the third significant
9 paragraph on the page under the heading
10 "supporting documents" one sees the planning
11 application is accompanied by an environmental
12 statement which includes a full assessment of the
13 proposed development:

14 "The ES has been prepared having regard to the
15 council's scoping opinion, made in response to
16 the scoping report submitted by STAL in July
17 2004. Where potentially significant effects have
18 been identified during the assessment, mitigation
19 measures and enhancement/compensation measures
20 are proposed and will be discussed with the
21 council's officers during determination of the
22 application."

23 So, one sees there:

24 "Mitigation measures and enhancement.
25 Compensation measures are proposed."

1 Can I just seek your assistance on that? Does
2 that mean past tense mitigation measures are
3 proposed in the ES; have been proposed in the ES
4 which one sees with the application? Or does it
5 mean "are proposed" in the present tense?

6 A. My understanding is that it means "are proposed
7 as set out in the different chapters of the
8 environmental assessment".

9 Q. I see. Again, it is plain from that paragraph
10 that BAA again accepted the obligation upon it to
11 propose appropriate mitigation
12 enhancement/compensation as part of its package
13 with the application.

14 A. Yes.

15 Q. That is helpful. I just wanted to understand
16 then how that relates to a passage in your main
17 proof at page 39, paragraph 9.6 under the heading
18 "approach". Do you have that?

19 A. Yes.

20 Q. Third sentence in that paragraph you say:

21 "It is, of course, the obligation of the
22 planning authority to assess the effects of the
23 application and to consider what mitigation
24 measures should be required to meet perceived
25 adverse effects."

1 And you make two references. That summary of
2 the position is not really the full picture, is
3 it, because of the obligations we have seen to
4 propose the mitigation lies primarily on BAA?

5 A. I think there may be two aspects to this,
6 firstly, in making the planning application, and
7 particularly in undertaking the environmental
8 assessment, BAA and its environmental specialists
9 are required to consider and propose mitigation
10 if they identify significant effects that require
11 mitigation through the topic-by-topic assessment
12 of the effects in the environmental assessment.
13 The conduct of the matter then passes to the
14 planning authority who is required to assess the
15 application, to consider whether it gives rise to
16 unacceptable impacts and then to address whether
17 those impacts can be resolved through mitigation
18 which could be imposed through the grant of
19 consent. Or whether the effects are not
20 susceptible to mitigation, in which case, other
21 things being equal, planning application would be
22 refused.

23 Q. Yes, well, obviously I understand that the chain
24 does not stop with the submission of the
25 application. But I am seeking to identify where

1 the primary responsibility lies, and that lies
2 with BAA to start the ball rolling, does it not,
3 on mitigation?

4 A. Primary responsibility in the preparation of the
5 application lies with the applicant. Primary
6 responsibility in the determination of the
7 application lies with the planning authority.

8 Q. Of course. As you have just explained in that
9 answer, the sequence of events is that one has to
10 take a view about the impact before one can take
11 a view about the mitigation?

12 A. Yes.

13 Q. That is very helpful, thank you. Can we just
14 turn now to see then how this was dealt with in
15 the environmental statement? I do not propose to
16 trawl through all 16 chapters because I think we
17 would find that a less than fruitful use of
18 inquiry time. All I want to do is alight upon
19 perhaps some of the more controversial chapters
20 within the document, and we could start I think
21 with the noise chapter -- chapter 2 -- which no
22 doubt has a CD number.

23 A. CD5.

24 Q. I have got them all marked as simply volume 5.
25 Sorry, CD5, volume 2. Could we look then please

1 at page 33 of this document? Do you have that,
2 Mr Rhodes? This is noise, so we have had 33
3 pages of noise and then section 13 "additional
4 mitigation and enhancement". Really, one needs
5 to look straight to the conclusion just to pick
6 up what the proposal was. The last sentence of
7 13.1(1):

8 "No additional mitigation is, therefore,
9 proposed to that already in place."

10 So, for the noise impacts, no additional
11 mitigation. Correct?

12 A. Correct.

13 Q. If we touch then on air quality which is the next
14 chapter in the environmental statement -- CD6,
15 for those who have broken these down into CD
16 numbers -- page 63. There is a page 63. It is
17 not the easiest thing to track down. It comes
18 just before the divider. Page 63 then. Do you
19 have that, Mr Rhodes?

20 A. Yes.

21 Q. We have got a section at the end there -- 60
22 pages of discussion in effect -- section 12:

23 "Additional mitigation and enhancement.
24 12.1(1) There is no requirement for additional
25 mitigation or enhancement measurement [I should

1 think that probably should be 'measures'] as none
2 of the statutory AQA would be exceeded as a
3 result of the proposed development."

4 So, again, proposal in the ES for air quality.
5 No mitigation.

6 A. Correct.

7 Q. Then, just two more. Chapter 4 "archaeology and
8 cultural heritage" -- and I turn to this more for
9 the reference to cultural heritage than to
10 archaeology because there is not an issue between
11 us as to the absence of any archaeological
12 impacts, Mr Rhodes, you will be glad to know --
13 volume 4 of this environmental statement. I will
14 see if I can pick up the reference again. It is
15 12.1(1) which is on page 16.

16 A. Page 16?

17 Q. Page 16, yes.

18 MR BOYLAND: Not in our volume. Page 16 is 652 and
19 653.

20 MR HILL: Do you have, sir -- are you into one of the
21 appendices, I wonder? The actual text of this
22 chapter is quite short and it then slips into a
23 series of appendices.

24 MR BOYLAND: You are quite right. I am sorry, yes.

25 MR HILL: The text stops really at page 16, and one

1 sees there, additional mitigation and
2 enhancement, Mr Rhodes, is not anticipated at
3 12.1(1) that any additional mitigation measures
4 or enhancement would be required. Correct?

5 A. I am struggling with the document, but I do not
6 think it matters. I cannot find your reference
7 but I am quite happy to accept that that is what
8 it says.

9 Q. It is very early on in the document at page 60.
10 You can put it away. Last one: volume 10, CD13
11 which is "nature conservation" and what happens
12 with the nature conservation chapter, which we
13 have to be slightly careful of, is that it gets
14 slightly sidetracked into discussing at some
15 length the impacts of some of the consequential
16 build development, does it not?

17 A. Yes.

18 Q. Which are not actually the subjects of the
19 planning application before the inspector. So,
20 there is some fairly extensive discussion of that
21 before one gets, somewhat later in the document,
22 to the indirect effects on nature conservation.
23 I think we probably need to turn to the bit that
24 is most germane to paragraph 12.4(1) on page 65
25 and not be sidetracked by the discussion of the

1 built development. So, page 65 and this is
2 looking at the impacts of air pollution and noise
3 on ecology which I think are really the germane
4 aspects for us and for the inspectors.

5 "12.4(1): there are no mitigation measures
6 that would suit the indirect effects of air
7 pollution and noise, so far as ecology is
8 concerned."

9 So, there is nothing there either. I have
10 looked at what one might dub(?), that the
11 headline environmental issues there, for the
12 purposes of the evidence, has been called by both
13 sides. There are obviously other volumes. I do
14 not think it is going to assist to go through all
15 those other volumes. But essentially, so far as
16 this environmental statement is concerned with
17 the extra 10 million passengers per annum, an
18 extra 170 movements per day -- which we will come
19 to -- the mitigation covered is bare, is it not,
20 so far as extras are concerned?

21 A. So far as extras is concerned, that is correct.
22 What the environmental statement concluded
23 effectively was that the mitigation package that
24 was worked up in the period 2001-03 did the job.

25 Q. Indeed. Then looking again back to the

1 chronology -- you can put those volumes to one
2 side for the time being -- the first attempt by
3 BAA to put forward mitigation measures in a broad
4 sense, as asked for by the scoping opinion, is to
5 be found in the letter of 9th November, is it
6 not? That is the one we looked at with
7 Mr Harborough.

8 A. Yes. Just to be clear, the scoping opinion would
9 only require mitigation measures if there were
10 significant effects to be mitigated.

11 MR BOYLAND: Could you give us the reference from that
12 for the record, please?

13 MR HILL: I certainly will, sir, yes. We ought
14 perhaps just to look at it. I have got these
15 documents in a format that may not be the same as
16 others. I have got all the correspondence in a
17 document that looks like that. Do you have that,
18 sir?

19 MR BOYLAND: No, not in that form. I know we have
20 seen the letter but I cannot remember which
21 document it is.

22 MR HILL: I think it is CD55 and it is a letter to
23 Mr Mitchell at Uttlesford, 9th November from
24 Mr Barton, the business development and planning
25 director of BAA Stansted, suggesting a series of

1 points for consideration, and attaching a table
2 identifying for discussion contents of a possible
3 section 106 agreement to accompany a grant of
4 planning permission. That table I think is
5 probably fairly familiar to the inquiry because
6 it is attached to the committee report of
7 29th November.

8 Just to understand what was happening at that
9 period in November last year, it is right, is it
10 not, that BAA had made it plain to Uttlesford
11 that it needed to have a clear determination of
12 the planning application on 29th November.

13 A. Yes.

14 Q. And that it would appeal against a refusal and if
15 the matter was deferred for further
16 consideration, it would appeal against non-
17 determination.

18 A. Yes. There had been earlier discussions about
19 that event arising during September but BAA had
20 given more time to the process.

21 Q. To be fair, there was a regulation 19 request.

22 A. Yes.

23 Q. The response to which came promptly but only at
24 the end of September and that needed to be
25 digested, did it not?

1 A. Yes.

2 Q. Indeed we know, as context for this letter of
3 9th November and what BAA were saying to
4 Uttlesford, one will find in the bundle a letter
5 of 5th October -- I want to give you the correct
6 reference -- BAA to PINS seeking an inquiry date
7 back in October. Do you recall that letter?

8 A. I do not directly recall it but I do not doubt
9 it.

10 Q. I want to give you the correct reference for that
11 but it is not immediately leaping from the bundle
12 in front of me.

13 MR BOYLAND: Again, I know we have it. I recall
14 seeing it except I have no idea what number it
15 is.

16 MR HILL: Yes, I do have it. 5th October and it is --
17 I will provide you with the CD reference. For
18 some reason it is not referenced on the face of
19 the document that I have got.

20 MR BOYLAND: Thank you.

21 MR HILL: But it is in that series. So, again, that
22 is the context as at the time of determination at
23 the end of November last year. I am not going to
24 get into discussion with you, Mr Rhodes, about
25 where BAA now stands under the various different

1 heads of impact where you are calling a witness
2 over the next few weeks, such as quality, noise
3 and what the precise proposals are. It seems to
4 me that it would be much more useful to the
5 inspectors if I asked questions about the present
6 position on mitigation direct to those expert
7 witnesses.

8 But just on noise, just a note at this stage,
9 it is right, is it not, that since the
10 determination of the application, BAA has
11 proposed the 35 MPPA cap in March this year, a
12 night time cap in April and a revised daytime cap
13 in May.

14 A. It is. In each of those cases, BAA has responded
15 to a request for those limitations from the
16 district council.

17 Q. But I presume it would not have done so had it
18 not thought that there was some point in imposing
19 those restrictions?

20 A. Whether or not they are technically necessary is
21 a matter which the inspectors will address, but
22 certainly BAA was happy to discuss and agree
23 those conditions. They only reflected the
24 assessment which is already set out in the
25 environmental statement. They do not involve the

1 airport operating in any other way in which BAA
2 intends or has assessed that the airport would
3 operate, and there was no difficulty acceding to
4 that request.

5 Similarly, if there had been other requests
6 from the district council on other issues, I am
7 sure that BAA would have considered them on their
8 merits. It was never BAA's desire to come to an
9 inquiry. It took the approach from the start
10 that this was an application wholly endorsed by
11 up-to-date government policy, and wanted to agree
12 the application and have it approved locally.
13 But it was up against strict deadlines. We know
14 -- I have said in my evidence that the scheduling
15 of aircraft slots is already becoming difficult
16 and it was entirely understandable that BAA would
17 want to say to the district council from the
18 start, "This is an application, if we are all to
19 avoid an inquiry, that will have to be determined
20 within a reasonable period of time because we
21 cannot afford to spend 18 months talking about
22 the application and find that we have met the
23 MPPA condition".

24 Q. We know that it was determined within
25 seven months of being submitted.

1 A. Yes.

2 Q. Are you suggesting for an application of this
3 scale with a 16 volume environmental statement,
4 health impact assessment, sustainability
5 appraisal, regulation 19 consultations, that
6 seven months is an unduly lengthy period of time?

7 A. Seven months was a period which BAA accepted. A
8 longer period may have seemed unnecessary, and
9 certainly the council themselves, at the start of
10 the process as Mr Mitchell explained, originally
11 set themselves a detailed programme which took
12 them to September.

13 Q. I know that, Mr Rhodes, but are you saying that
14 seven months is an unreasonably lengthy period of
15 time or not? You are not, are you?

16 A. I am saying it is quite a long time to determine
17 an application of this nature which the council
18 have seen coming since at least 2004.

19 Q. You say "seen coming". It did not come until
20 26th April this year for whatever reason.

21 A. I know. We have seen that it was scoped in 2004;
22 it was flagged up in 2002. The council had a
23 very long time to consider what its approach was
24 likely to be to an application to maximise the
25 use of the runway.

1 Q. That does not help though, does it, until one has
2 got the environmental statement there grappling
3 with the details and one has got the consultation
4 responses, the regulation 19s coming in. It does
5 not help. That process, as we know, did not
6 start until 26th April and you are not telling
7 the inspector, are you, that seven months was an
8 unreasonable period of time for the local
9 planning authority to consider that?

10 A. No, I am not saying that seven months was
11 unreasonable.

12 Q. Good. Nor could you fairly point to the council
13 dragging its feet in the processing of the
14 application, could you, Mr Rhodes?

15 A. Well, if you want to push me on these issues, I
16 do find it surprising that even today the council
17 has not identified the mitigation which it thinks
18 is necessary. Or, in my view, produced evidence
19 to identify what the significant adverse effects
20 of the development are that require to be
21 mitigated.

22 Q. That goes to the substance of the case, does it
23 not, and the issues that there are between BAA
24 and Uttlesford ...

25 A. Well, it remains the case that the district

1 council has not identified to BAA what it wants
2 in relation to conditions or mitigation and
3 remains apparently in a position of being unable
4 to discuss those things.

5 Q. No, that is not the case. I know a meeting is
6 scheduled. There have already been meetings
7 scheduled and meetings have taken place this year
8 on that subject so I do not think that is a
9 fair ...

10 A. At BAA's initiative with no response from the
11 district council setting out what it requires,
12 with the exception of the air noise conditions.

13 Q. Exactly. It is not a fair reflection of the
14 position, is it? Now, can we just move on? You
15 are not saying it is unreasonable but you would
16 simply point back to the mitigation matter when I
17 press you further on that.

18 You say in respect of the noise matters that
19 they only reflect the assessment in the
20 environmental statement. The implication of what
21 you are saying is they do not actually reduce the
22 impacts in any way.

23 A. That is correct.

24 Q. What they do have or represent is a drawing in of
25 the cap that was considered at the time of the

1 2001 planning permission?

2 A. Yes, in accordance with the assessment of the
3 likely noise footprint set out in the
4 environmental statement.

5 Q. So, why was that not proposed as part of the
6 noise chapter of the environmental statement?

7 A. It is possibly for a lawyer to say, but one may
8 have identified that it is not strictly
9 necessary. If that is the agreed environmental
10 effect of the development, then it is a question
11 for others as to whether or not it needs to be
12 conditioned. Mitigation generally relates to the
13 identification of unacceptable impacts and how
14 they might be remedied. Those conditions simply
15 describe the air noise effects set out in the
16 environmental statement.

17 Q. That is a helpful answer and I shall take up
18 those matters with Mr Charles in due course.

19 Now, the processing of the application: you
20 have seen, I am sure, the account in the
21 committee report, CD34 paragraph 17, of council
22 members having attended 19 special meetings to
23 consider this application?

24 A. Yes, I have.

25 Q. Did you attend some or all of those?

1 A. No, I did not. I did attend the meeting in
2 November when the application was determined but
3 I did not attend the earlier meetings, although
4 some were available on webcast.

5 Q. Were you glued to the webcast, Mr Rhodes?

6 A. I have looked at -- I did look at some, yes.

7 Q. Now, again, I just want to understand, because I
8 have looked very carefully through your evidence
9 and correspondence from BAA, there is no
10 suggestion anywhere, is there, that there has
11 been any impropriety of any sort in the council's
12 handling of the application?

13 A. No, certainly not. What I think is
14 disappointing, which does not at all relate to
15 impropriety, is the failure of the council to
16 identify significant adverse effects and to
17 identify a mitigation package which it thinks may
18 be necessary to address those effects.

19 Q. I go straight back to the substance of the
20 issue ...

21 A. It does yes.

22 Q. ... and say that is not really a procedural point
23 of the sort that I am asking you about,
24 Mr Rhodes, is it? It goes back to the issues
25 that are between the parties. But, no, there is

1 no procedural point; no suggestion of any
2 impropriety in material considerations being
3 brought to bear on the determination.

4 It is right also that there were no complaints
5 of any sort by BAA about the handling of the
6 application at the time? No contemporaneous
7 complaints of any sort?

8 A. No. I know that representatives of STAL met
9 regularly with the officers before and through
10 the process and obviously wished the process to
11 reach a conclusion, but no complaints, no.

12 Q. Good. Now, briefly CD118, for those who have it
13 in that form; it is a costs circular. I have my
14 well-thumbed and dog-eared version. Annex 3,
15 paragraph 11 you refer to in your evidence, and
16 it was indeed referred to by Mr Humphries in his
17 cross-examination. Paragraph 11, annex 3:

18 "Whenever appropriate, planning authorities
19 will be expected to show that they have
20 considered the possibility of imposing relevant
21 planning conditions on a grant of permission
22 which would allow proposed development to
23 proceed, and they have considered any conditions
24 proposed to them before refusing permission."

25 Now, what form of condition, Mr Rhodes, do you

1 say UDC should have considered which would have
2 met its concerns and allowed it to grant
3 permission?

4 A. I think there may be several parts to an answer
5 to that question. The first is to say, for
6 instance, in relation to air noise, where UDC
7 did, after the event, propose conditions which
8 BAA has been happy to address and accept. And
9 Mr Turner in his evidence, as I understood his
10 answers, accepted that those conditions did
11 represent adequate mitigation. That is something
12 which the council could have addressed at the
13 time.

14 On other matters, I find it more difficult
15 because I do have a difficulty in understanding
16 what the significant adverse land use impacts of
17 the development are. I do not believe that the
18 committee report got to grips with defining those
19 impacts sufficiently and asking itself the
20 question whether or not they could be mitigated.
21 And I believe that was the responsibility of the
22 council at that time.

23 Q. Yes, that is not really what I am asking though,
24 is it? I am asking you to be specific about what
25 relevant planning condition you say UDC should

1 have considered which would have met its concerns
2 and allowed it to grant planning permission?

3 There is not actually anything of that nature set
4 out in your proof, is there, Mr Rhodes?

5 A. Well ...

6 Q. There may be reasons for that but there is not
7 anything set out in your proof.

8 A. If BAA considered it sensible that there be
9 additional conditions beyond those that it set
10 out on 9th November, it would have said so to the
11 council. We know that, for instance, water
12 conditions have been agreed. We know there are
13 some conditions from the highways agency. What I
14 have found it more difficult to address are the
15 other reasons for refusal; what the specific harm
16 is and, therefore, how they might be addressed by
17 condition.

18 Q. That is a different point though, is it not? The
19 point I am asking you about is the specific point
20 that arises from the circular which really puts
21 an onus on planning authorities to check and see
22 whether there might be a relevant planning
23 condition that they could frame which would avoid
24 them having to refuse planning permission. Now,
25 UDC prior to their evidence and it was quite

1 obvious that they do not consider that there is a
2 planning condition or series of planning
3 conditions which would allow permission to be
4 granted. I am giving you the opportunity now to
5 tell the inquiry whether you have, in your back
6 pocket, a series of planning conditions which UDC
7 should have considered which would have allowed
8 them to grant planning permission?

9 A. I do not have any back pocket conditions. If
10 there were additional conditions which I thought
11 were appropriate they would have been suggested
12 by BAA. But what I do not find is the district
13 council seriously trying to address the extent to
14 which mitigation that it could suggest to BAA
15 would have been capable of addressing the effects
16 which it says the application gives rise to.

17 Q. That goes back to the substance of the case ...

18 A. I have always found it unusual that there are
19 seven reasons for refusal that either suggest
20 inadequate information or inadequate mitigation
21 and that says to me that there is a planning
22 authority that has not done the job as thoroughly
23 as it should have done.

24 Q. You may say that. Mr Harborough has provided his
25 evidence and he gave his position very clearly on

1 his view on the residual effects. We will no
2 doubt come back to these issues again when we
3 look at your witnesses who deal with specific
4 environmental impacts, but I think I have had the
5 answer I needed to have from you on that
6 paragraph of annex 3 of circular 8 of 93,
7 Mr Rhodes, and we can move on.

8 Can I put that to one side and ask you about
9 the fallback position? I am presuming that you
10 understand and acknowledge the concept of the
11 realistic fallback position as referred to by the
12 courts on a number of occasions.

13 A. I am sorry, I am not quite sure what you mean.

14 Q. The realistic fallback position: what is banked
15 in terms of what a particular applicant or
16 developer can do in any situation. The starting
17 point -- the building block -- upon which an
18 increment is to be added.

19 A. Thank you, yes.

20 Q. You understand that concept. And in this case
21 that is based upon the 2003 planning permission
22 but limited by the increased loading factors
23 which have resulted in 25 MPPA being achieved
24 with far fewer PATMs than had been anticipated in
25 2001, plus a number of other factors discussed in

1 the environmental statement. That is right, is
2 it not?

3 A. Yes.

4 Q. Thus we find, perhaps you could just look at
5 volume 1 of the environmental statement, which is
6 a very useful summary. That is CD4. If you
7 could look, please, to page 26 where we find
8 table 4, and in the middle column, the familiar
9 25 MPPA case with the total ATMs at 202,000, yes?

10 A. Yes.

11 Q. Sir, you may like to note that there is also
12 indication of non-ATMs on that page. It is a
13 point you raised last week. We have the
14 discussion of that -- how we get to the 25 MPPA
15 case -- on page 23 under section 6.3, do we not?

16 A. Yes.

17 Q. Thank you so much. The consequences of the
18 changes in what was predicted back in 2001 are
19 that the 241,000 ATMs which were permitted in
20 2003 are effectively theoretical and BAA has not
21 shown in the environmental statement that there
22 is a likelihood that they could be achieved. On
23 the contrary, it suggested an alternative
24 fallback scenario for 202,000.

25 A. That is correct. The assessment case is between

1 the 25 and the 35 MPPA case, rather than between
2 the 2003 consented figure and the 35 MPPA case.
3 But of course, both in the air noise chapter and
4 in our evidence, BAA has drawn attention to the
5 fact that it is right to attach some significance
6 to the fact that 241,000 is a level which the
7 District Council was prepared to accept as a
8 matter of judgement of acceptability.

9 Q. We have been over that ground already with
10 Mr Harborough and I am not going to go back over
11 that with you. I note the way you put it,
12 "attach some significance". As a matter of
13 approach, the fallback scenario is 202,000 ATMs
14 and the increment is therefore 62,000 ATMs.

15 A. It is.

16 Q. Averaged out 170 per day?

17 A. If you say so.

18 Q. Thank you. You can put volume 1 of the
19 environmental statement away, and can I turn,
20 please, to some more general matters: the
21 decision-making process looked at, really as a
22 matter of principle, Mr Rhodes, if we may, before
23 we get to the specifics of this case. Can I ask
24 you to look, please, in your proof to page 2, the
25 main proof, this is. Paragraph 2.2, where you

1 say:

2 "All planning decisions require a [I think
3 that should be 'a'] judgement to be made."

4 Is that right?

5 A. Yes.

6 Q. "Taking account of all material considerations
7 against the starting point of planning policy."

8 I will come back to that latter phrase in a
9 moment, but the judgement requires consideration,
10 does it not, of the weight to be attached to the
11 various material considerations which are
12 relevant to a given proposal?

13 A. Yes.

14 Q. So one has to consider what weight and then one
15 has to undertake the balance of those which tell
16 in favour and those which tell against the grant
17 of planning permission?

18 A. Yes, within the context of policy.

19 Q. Well, policy will be one of those considerations
20 to which one is attaching weight, will it not?

21 A. That is one way of addressing it, yes. (Pause)

22 Q. And it is a complex exercise, is it not, when the
23 development is IEA development such as this,
24 supported by a full ES, many issues raised by
25 statutory and non-statutory consultees; it is a

1 complex exercise?

2 A. You mean generally, or in this specific case?

3 Q. In a case such as this, a large environmental
4 statement, an extensive policy background,
5 environmental assessment being undertaken for the
6 first time.

7 A. Complex is a relative word.

8 Q. Yes.

9 A. It is certainly a process which requires careful
10 thought.

11 Q. Yes. You say in paragraph 2.2:

12 "... against the starting point of planning
13 policy."

14 The starting point is in fact the development
15 plan, is it not?

16 A. It is, yes.

17 Q. If we just pause briefly to consider the
18 development plan in the round -- I am hoping we
19 are not going to have to descend to the
20 individual documents at any great length -- and
21 if we look at the statutory development plan,
22 RPG, the structure plan and local plan, no part
23 of the statutory development plan contains a
24 policy which allocates Stansted Airport for
25 further development, up to and including the

1 maximisation of use of the existing runway. That
2 is right, is it not?

3 A. That is correct.

4 Q. We know that RPG is about to be overtaken by RSS,
5 but even that emerging RSS will not contain an
6 allocation type policy, will it?

7 A. RSS generally do not contain allocations. What
8 is apparent from the RSS though is that the
9 maximum use of the runway, and indeed, the
10 development of a second runway, is part of the
11 RSS.

12 Q. Well, we are going to look at that. That is the
13 one document I think we will look at in a moment,
14 but it is right, is it not, that the RSS EIP has
15 not considered the detailed impacts or the
16 alleged gains, the benefits associated with an
17 extra 10 million passengers? Well, it has not
18 gone through the sort of exercise that we are
19 going through over these months.

20 A. That is certainly correct, and we know the
21 reasons why that is the case.

22 Q. Thank you. Can we turn then, please, to that
23 familiar trio, CD74, 75 and 76. (Pause) Could
24 we just, as context, looking at one or two
25 passages -- it is not going to take very long --

1 look at your proof, paragraph 6.3 on page 23,
2 where you are dealing with regional policy and at
3 6.3, you say:

4 "The draft RSS has consistently supported
5 making maximum use of the existing runway and
6 refers to draft policies ST1 and E14."

7 Can we just look at those in CD74 -- I hope I
8 have the right references to enable this to be
9 done quickly -- ST1 I think is on page 85. Do
10 you have that, Mr Rhodes?

11 A. Yes.

12 Q. Policy ST1 is the spatial strategy and there are
13 a series of bullet points, the seventh of which
14 is, when one looks at the preamble:

15 "To deliver the Stansted M11 strategy, local
16 development documents and related strategies will
17 provide for the expansion of London Stansted
18 Airport up to the maximum capacity of its
19 existing single runway."

20 That policy has gone and not returned in the
21 Secretary of State's proposed changes, is that
22 not right?

23 A. Certainly not in that form, no.

24 Q. And then page 119, we have E14, "Regional
25 Airports" and there is a policy there, airports

1 having an important strategic role. The second
2 sentence:

3 "Airport growth is supported to the maximum
4 capacity of the existing runways in the case of
5 Luton and Stansted and a modest expansion to meet
6 local market demand in the case of Norwich and
7 Southend."

8 Again, that policy in that form has gone and
9 not returned, has it not, in the Secretary of
10 State's proposed changes?

11 A. It has not returned in that form, correct.

12 Q. Can we put CD74 away now. CD75, the EIP panel
13 report, page 74, please, paragraph 5.100, and
14 this is discussing largely the second runway. If
15 one looks at the second half of paragraph 5.100:

16 "Either way, the growth of traffic on the
17 current runway is likely to proceed at whatever
18 pace the market dictates, until such time as the
19 operator's long term confidence results in a
20 decision to proceed with the second runway.

21 Although supported by the ATWP, a second runway
22 remains to be brought forward and considered
23 through the proper statutory processes."

24 So in that sense, immaterial whether RSS
25 supports one runway or two, and there is then

1 reference to what one does with the policies.

2 The reference there to the proper statutory
3 processes, that is a reference to development
4 control and environmental impact assessment, is
5 it not?

6 A. It is, yes.

7 Q. And the EIP panel effectively is saying, are they
8 not, it is not their role to pre-empt or pre-
9 judge those processes, right?

10 A. I did not think anybody would suggest that it
11 was, but they are also saying, end of the
12 previous paragraph, that it is not their role to
13 review government policies contained in the Air
14 Transport White Paper.

15 Q. I am not suggesting --

16 A. And we know that that is the reason why these
17 policies do not return in the proposed changes.

18 Q. I am not suggesting that it is the EIP panel's
19 role to review government policy. The question I
20 put to you -- I am seeking to help the inspectors
21 move on -- the EIP panel are saying that it is
22 not their role to pre-empt or pre-judge the
23 statutory processes that they refer to, are they
24 not?

25 A. I do not know whether they are saying that, but I

1 would have agreed with them if they did say that.

2 Q. Right. So that is the right position?

3 A. Yes.

4 Q. Now, that is being said in respect of the second
5 runway essentially, but the same applies, does it
6 not, for this application before these
7 inspectors?

8 A. Yes.

9 Q. Thank you. Put that one to one side. CD76, last
10 in the series, page 114, and we have looked at
11 this already, so I do not need to dwell on it. I
12 should have said really at the outset, where an
13 issue has been aired on the floor of the inquiry
14 already, I am not going to re-air it throughout,
15 so we will proceed at a faster pace.

16 MR BOYLAND: That is welcome, thank you.

17 MR HILL: Just really touching base on CD76, E8 is now
18 the policy about the region's airport, and what
19 that does -- you are absolutely right -- the EIP
20 panel do not seek to depart from government
21 policy in any way. What it is doing there is
22 recording what the Air Transport White Paper
23 says.

24 A. Yes.

25 Q. Thank you very much, and that can be put to one

1 side.

2 MR BOYLAND: Are you moving on to a new topic?

3 MR HILL: I am, sir.

4 MR BOYLAND: Yes. I think it might be a convenient
5 point to take a break then. We will break until
6 a couple of minutes before 11.40 am, thank you.
7 (11.24 am)
8 (A short adjournment)
9 (11.40 am)

10 MR BOYLAND: Thank you, ladies and gentlemen. The
11 inquiry is resumed. Mr Hill?

12 MR HILL: Thank you, sir. Mr Rhodes, I am told during
13 the short adjournment --

14 MR BOYLAND: Sorry, could we have some quiet, please?
15 Thank you.

16 MR HILL: Mr Rhodes, I am told during the short
17 adjournment that we are not always audible at the
18 back of the room, so I will try and speak up and
19 perhaps you could do the same.

20 MR BOYLAND: Could mobile phones be switched off,
21 please.

22 MR HILL: Now, can we turn then, please, to the Air
23 Transport White Paper. Your case plainly relies,
24 understandably, very heavily upon it, yes?
25 A. Yes.

1 Q. Although as Mr Philpott(?) put it in relation to
2 the government's air quality strategy, it just
3 has the status of policy, not legal status. That
4 is right, is it not?

5 A. Well, it is certainly not an act of parliament.

6 Q. No. And it does not -- as we know and we have
7 seen -- cut across the development control
8 process or the EIA Regulations, correct?

9 A. Could you just be a little bit more specific,
10 please, about what you mean by that?

11 Q. The Air Transport White Paper does not seek to
12 cut across the development control process or the
13 EIA Regulations.

14 A. I do not think there is anything between us on
15 that.

16 Q. Good. Now, you in your evidence rely, as I have
17 said, heavily on the White Paper to establish
18 your case under two heads: under the head of
19 need, and under the head of the economic gains,
20 the benefits alleged to accrue; those two heads.

21 A. Yes. It also contains helpful policy in relation
22 to the approach to a decision and the control and
23 mitigation of impact.

24 Q. Now, I am not going to cover all the ground,
25 re-cover that that has already been covered, and

1 in particular, I am not going to seek your
2 opinion on what Mr Justice Sullivan's judgment
3 may or may not have meant. I am going to be
4 making submissions on that in due course, so
5 please do not be too disappointed if I do not ask
6 you to take that out and take you through
7 paragraphs of the judgment.

8 What I do want to do with you though,
9 Mr Rhodes, is just see if we can ensure that we
10 are working from a common starting point so far
11 as terminology is concerned, because there were a
12 number of words floating around in the
13 documentation, "the need, demand, the benefits"
14 et cetera. I want to see if we can ensure that
15 we have a common view as to what is meant by
16 those terms.

17 Certainly, in your proof of evidence, if I
18 could direct you to page 3 of the main proof,
19 paragraph 2.7, you tell us that you consider in
20 the proof:

21 "The identified need for and the benefits of
22 the G1 development."

23 You refer to them separately, and as I see it
24 -- and I obviously read your proof very carefully
25 -- you confirm that they are separate matters

1 which require separate analysis, right?

2 A. I do not actually see them that way. I see them
3 as being very closely related, one to the other.

4 Q. Well, I have not suggested that they are not
5 related. I have just suggested that they are,
6 within your proof, dealt with in separate
7 sections and each receive an independent
8 analysis, quite properly. That is the way your
9 proof proceeded, is it not?

10 A. Sorry to hesitate. Fine, let us proceed on that
11 basis then.

12 Q. And you refer in your evidence on a number of
13 occasions to the need for additional airport
14 capacity. We can find a reference, just to hang
15 the question on, at page 10. We are quoting from
16 the Green Paper of 2001, paragraph 4.10 at the
17 bottom, at the foot of page 10. This is setting
18 the scene, back in 2001:

19 "An example is our intention [this is the
20 government's intention] to make clear policy
21 statements on the need for additional airport
22 capacity."

23 Now, for the relationship between need and
24 demand, we should consult your rebuttal proof,
25 should we not, at page 2, paragraph 2.4? If we

1 can just look at that, because it is a very
2 useful summary of the way in which the matter is
3 dealt with in the White Paper and the White Paper
4 Progress Report. Do you have page 2 of the
5 rebuttal?

6 A. Yes.

7 Q. There, as you indicate, discussing what you call
8 the burden of the White Paper, paragraph 2.4:

9 "Out of a forecast demand for 490 million
10 passengers per annum, the government has set out
11 proposals to provide capacity for 465 million
12 passengers per annum in 2030."

13 So that 490 MPPA is unconstrained demand, is
14 it not, that is no constraint on the supply of
15 flights, the way it is put?

16 A. Yes.

17 Q. So the government has set out proposals to
18 provide for 465 million, so in government air
19 transport policy, "need" is about 95 per cent of
20 unconstrained demand; that is the way in which
21 the policy proceeds, is it not?

22 A. Yes. I do not know if it would help if I try to
23 explain my view of that. The government --

24 Q. I wanted to get the figures sorted out first.

25 A. Fine. The figures are, as you say, on the page.

1 The government clearly identifies benefit from
2 increased aviation, perhaps up to the point of
3 satisfying demand entirely, but the government
4 recognises that there are environmental and other
5 constraints. To that extent, the need which it
6 has identified is the 465 million. That is
7 probably identified as need rather than demand,
8 for the reasons that you have been putting to me,
9 but the reason that it is identified as need at
10 all is because it brings benefits. There are
11 many demands in the economy which do not
12 necessarily have to be addressed. The government
13 wants this demand to be addressed up to the point
14 that we have seen, because it considers that
15 benefits derive from that. That is why I said
16 earlier that need and benefit are so closely
17 related.

18 Q. Well, do not worry. I am going to come and look
19 at the benefit case, I can assure you, in some
20 detail, but I wanted first of all to understand
21 and ensure we have a common starting point for
22 what is meant by need and what is meant by
23 demand. Need in the context of the White Paper
24 is 95 per cent of unconstrained demand.

25 A. As expressed in policy, that is correct.

1 Q. Indeed. That is a point we can move on from.

2 So in terms of development control proposals,
3 applications coming forward for processing in the
4 normal way, any proposal which assists in
5 achieving the 465 million passengers per annum,
6 95 per cent of the unconstrained demand forecast,
7 is -- or can be regarded as -- consistent with
8 the Air Transport White Paper, and can claim that
9 it has the support of government policy.

10 A. No.

11 Q. So long as it is otherwise consistent with the
12 White Paper.

13 A. Well, any proposal which is identified in the
14 White Paper can claim consistency with it, yes.

15 Q. Obviously the White Paper does not look at every
16 individual increment in building up that 465 MPPA
17 that any airport that might choose to put in that
18 planning application for.

19 A. No, except that the White Paper is unusually
20 specific, unusually site specific, as to the
21 proposals which it supports and does not.

22 Q. Yes. But Mr Rhodes, we do not need to look at it
23 in that level of detail. You and I know that it
24 does not break down into individual elements,
25 every part of that 465 MPPA, and identify how a

1 planning application would come forward to
2 deliver that individual part.

3 A. Well, it gets very close to doing so, and
4 deliberately so.

5 Q. I do not think we need to get sidetracked into
6 that exercise, because I will put the question to
7 you again: any proposal which assists in
8 achieving that 465 million per annum, and is
9 otherwise consistent with the White Paper, can
10 claim it has the support of government policy and
11 that a need for it has been established.

12 A. If it is consistent with the White Paper, yes.

13 Q. That is the proposition that you are advancing.

14 (Pause) And can I just be clear, do you have any
15 criticism to make of government policy in the
16 White Paper, or the way it was formulated in the
17 SERAS or the consultation documents?

18 A. No, I do not. I think it was an exemplary
19 approach to the formulation of policy.

20 Q. I thought you might say that, Mr Rhodes.

21 Now, as we know, government policy establishes
22 a need, does it not, for a variety of things in
23 other contexts: affordable housing, protection of
24 the greenbelt et cetera?

25 A. Yes.

1 Q. Do you say that a need established by government
2 policy attracts the same weight whatever the
3 nature of the need?

4 A. I thought you were going to say "whatever the
5 nature of the policy".

6 Q. No.

7 A. I would say if there was a very specific and
8 direct endorsement of a need, then yes, it is
9 likely to attract similar weight. I have not
10 given thought to the whole range of possibilities
11 within that question, but government policy
12 deliberately sets out to identify a need which it
13 wants to be met, that is likely to carry very
14 significant weight across a range of needs.

15 Q. Thank you. Now, in your proof at paragraph 5.14,
16 you do in fact cite Jeremy Sullivan, and I only
17 draw your attention to it, because you underline
18 two words. This is page 20, paragraph 5.14. You
19 there record and emphasise the judge saying that
20 the White Paper will be given -- will undoubtedly
21 be given -- considerable weight. You obviously
22 underline that for good reason. Then in your own
23 paragraph 5.15 immediately following, the second
24 bullet point, you, at the top of page 21, say
25 that the policy does carry considerable weight

1 for the reason that you set out.

2 At the risk of spending too much time on this,
3 does that equate to the significant weight agreed
4 in the statement of common ground with Uttlesford
5 Council at paragraph 4.11? The same point:
6 significant/considerable are interchangeable?

7 A. I do not know what was in the mind of Uttlesford
8 District Council when they signed up to the
9 statement of common ground. I do not want to be
10 too semantic about it. I think you know my view
11 about the weight to be attached to the policy.

12 Q. I mean, I am just asking you for your --

13 A. What one does to reflect common ground is seek to
14 find common ground in order to finalise the
15 statement.

16 Q. Yes. And in order to sign up --

17 A. But I have set out my view about the weight of
18 the policy in my evidence.

19 Q. Yes. You have also signed up to the proposition
20 in the statement of common ground that
21 significant weight should be attached to the
22 White Paper, which Uttlesford of course accept.
23 Now, is that effectively interchangeable with
24 "considerable weight" in your proof? That is all
25 I am asking you.

1 A. No, I do not think it is. Of course, it is
2 significant. That is not controversial. I
3 believe that I take the view that the weight to
4 be attached to the White Paper is greater than
5 the weight which the District Council has
6 attached to it.

7 Q. Well, there we are. This could descend into a
8 discussion of semantics that I want to avoid.
9 What is absolutely clear from the way in which
10 you have put your case -- and indeed, one sees a
11 reflection of that at the bottom of page 20 in
12 your first point under paragraph 5.15-- is that
13 you do not suggest that the White Paper is an
14 overriding consideration.

15 A. No.

16 Q. Good. Now, I am obviously going to come back to
17 what the White Paper provides, but whilst we are
18 looking at the status and approach to
19 consideration of the ATWP, it is probably
20 sensible to look at the new planning White Paper,
21 CD376, and we will come back to the discussion of
22 the need and the benefits in a moment. Do you
23 have 376 to hand?

24 A. I do.

25 Q. This is, as some of us observed in opening, out

1 for consultation, a new approach to a number of
2 issues, and insofar as major national
3 infrastructure is concerned, proposing what I
4 called "a new breed of national policy
5 statement". Remember that? It is setting out
6 some proposals for how that new breed might be
7 established. Again, this is a document the
8 inspectors can and will want to consider -- no
9 doubt at some length -- independently of the
10 debate on the floor of the inquiry, but perhaps
11 we could just agree one or two points, Mr Rhodes.

12 The proposals, if we look at page 43 to 44,
13 paragraph 3.7:

14 "... suggests that this new breed of national
15 policy statement [if one looks at the sentence
16 that goes over from the bottom of 43 to the top
17 of 44] would be subject to parliamentary
18 scrutiny."

19 That suggests that there would be a layer of
20 approval, formal approval by parliament, prior to
21 the policy acquiring its final status.

22 A. Yes.

23 Q. We know obviously that that is not something that
24 happened to the ATWP prior to it being published
25 in its final form, obviously.

1 A. Yes. We know that, but we also know that the
2 same government has endorsed the ATWP in this
3 White Paper and identified no need to review it
4 for three to five years.

5 Q. Well, we are going to look at the two other
6 references in this White Paper that bear upon
7 status. The second reference is on page 45 and
8 that is a reference in paragraph 3.9, bullet
9 point 1, to the fact that national policy
10 statements, wherever appropriate, the government
11 expects would be subject to SEA, Strategic
12 Environmental Assessment.

13 A. Yes.

14 Q. Again, that is not something that happened to the
15 ATWP, for reasons, I think, of timing. It was
16 not captured by the regulations.

17 A. It was not captured by SEA because SEA was not
18 incorporated into the UK legislation at that
19 time, but it is apparent from an examination of
20 the process that it was equivalent to -- in many
21 cases, greater than -- an SEA process.

22 Q. You say that, but as a matter of record, it did
23 not have the SEA process applied to it. That is
24 a matter of fact, is it not?

25 A. If by the SEA process we mean the strict letter

1 now set out in the directive, that may be true,
2 but we do know --

3 Q. Well, it is true.

4 A. Sorry, we do know from the SERAS documents that
5 its approach was informed by the emerging SEA
6 directive at the time, as well as by other best
7 practice for assessment of projects and plans.

8 Q. I think we have agreed that it was not subject to
9 SEA. I think beyond that, it becomes a matter of
10 submissions to raise.

11 Point 3:

12 "The new breed of national policy statement
13 will still be subject to, even in its enhanced
14 form, a wide variety of limitations, not
15 withstanding its elevated status."

16 And we see that from page 49, do we not,
17 paragraph 3.13. If you look at that paragraph,
18 one reads:

19 "This does not mean the national policy
20 statement will be the only consideration from the
21 Commission. Even where national policy
22 statements are location specific and involve
23 extensive local consultation, it will not be
24 possible for all of the impacts of a particular
25 development to be able to be assessed at the

1 national policy development stage. It will also
2 not be possible for national policy statements to
3 identify and address how individual projects
4 would take account of the wide range of relevant
5 EC and domestic law provisions which will apply,
6 including, for example, obligations arising from
7 the habitats and air quality directives, the
8 rights of individuals under the ECHR, or
9 obligations arising from UK commitments in
10 relation to climate change."

11 So even the new breed will be subject to a
12 wide variety of limitations; caveats such as
13 those set out in that paragraph, yes?

14 A. Such as those set out in the paragraph, yes. I
15 think what this is saying is no more than I have
16 said already, which is that:

17 "The existing or new breed of national policy
18 statements do not predetermine or authorise a
19 specific development, and the effects of the
20 development fall to be assessed against the
21 identified need through the planning application
22 process."

23 Or in this case, the application to the
24 Commission.

25 Q. Thank you very much. We have looked at the

1 important points in that document. It can be put
2 away now, thank you very much. We will go back
3 to the issue of the economic gains, the benefits,
4 which is left over from our earlier consideration
5 of need and demand.

6 Section 8 of your proof, please, which does
7 indeed deal with these related matters in a
8 separate way, as I suggested. Section A, which
9 is paragraph 8.4 to 8.9, deals with the forecast
10 needs. I do not think we need to go over that
11 ground in the light of the matters that we have
12 already discussed.

13 You turn to the benefits in section B at
14 paragraphs 8, 10 and the succeeding paragraphs,
15 do you not? That is the right part?

16 A. Yes.

17 Q. What we also know is that volumes 5 and 6 of the
18 environmental statement, CD8 and CD9, deal
19 respectively with the economic effects and the
20 employment effects of the proposed development
21 and set out in considerable detail what the
22 economic impacts and the employment effects are
23 predicted to be, over some 60 pages or so, yes?

24 A. Yes.

25 Q. Now, it is right, is it not, as a matter of

1 record, that none of the material in volumes 5
2 and 6 of the environmental statement, the
3 detailed analysis of this proposal, is contained
4 within the ATWP?

5 A. I might just hesitate about the word "none" but
6 certainly the chapters that you have identified
7 contain further information, much of which is
8 project specific, particularly in relation to
9 employment. (Pause)

10 Q. Thank you for that. That is helpful, and again,
11 one will be able to check how that answer relates
12 to the documentation. It becomes then a matter
13 of submission, but thank you for your help on
14 that.

15 Generally, on the question of the benefits,
16 you say, as I understand it, Mr Rhodes, that the
17 ATWP establishes a general proposition that there
18 will be economic gains, the benefits associated
19 with any proposal for which there is a need
20 identified in the ATWP.

21 A. Generally, that is true.

22 Q. That is how I understood your case to be put, but
23 surely you do not say that the economic case, the
24 benefits, will be identical for any proposal
25 however big or small simply because it is

1 consistent with the ATWP?

2 A. No, I do not say that, but I do draw attention to
3 specific statements within the ATWP about this
4 proposal.

5 Q. Yes, and we are going to come to those, have no
6 fear, but I want to get the principles clear.

7 You are not saying that the economic gain, the
8 benefits will be identical for any proposal,
9 however big or small, so you are not saying, "For
10 any proposal, the economic case would necessarily
11 be entitled to the same notional weight. I would
12 need to look at the specifics". It must be
13 right, must it not, Mr Rhodes?

14 A. That must be right in relation to the economic
15 case, but not necessarily in relation to the
16 need, if there is a clear statement of need.

17 Q. So you are not saying, for example, "The economic
18 case for a third runway at Heathrow should carry
19 the same weight as a terminal extension at
20 Luton"?

21 A. No, I am not saying that.

22 Q. Good. So it follows, does it not, that in order
23 to weigh the economic gains -- the benefits --
24 properly in determining an application, you have
25 to consider the nature and scale of the benefits

1 associated with the specific proposal under
2 consideration?

3 A. It depends what you mean by "consider". If you
4 mean reconsider what the Air Transport White
5 Paper says, then I do not agree with you. If you
6 mean consider what the Air Transport White Paper
7 says, if it speaks specifically about the
8 benefits of a particular project, then of course
9 you have to consider that, and attach weight.

10 Q. I mean identify. You need to identify in order
11 to weigh --

12 A. Yes. We have the benefit in this case of an up
13 to date national policy statement, which reaches
14 clear conclusions about the economic benefits of
15 this application. It is a very unusual
16 situation, but it is one which must carry very
17 substantial weight.

18 Q. Do not worry, Mr Rhodes, we are going to go
19 there. Let me take that question again, because
20 I just want to make sure that I do not proceed to
21 the next stage without having understood you
22 properly. In order to weigh the economic gains,
23 the benefits, properly in determining an
24 application, you have to identify the nature and
25 scale of the benefits associated with the

1 specific proposal under consideration.

2 A. My approach has been to identify the nature and
3 scale of the benefits and the need which the
4 White Paper identifies for a particular project,
5 so that, for instance, where the White Paper
6 tells us that this application would give rise to
7 large net economic benefits, I accept that as a
8 statement of government policy. I do not set out
9 to try and test the argument, "Oh no, it does
10 not" because that would be a contradiction of
11 national policy.

12 Q. But you see, Mr Rhodes, your environment
13 statement, volumes 5 and 6, with all the detailed
14 material that they contain, are entirely
15 redundant, are they not, if one delves no more,
16 say because there is a sentence in the White
17 Paper about the net economic advantages of
18 maximising use, the box is ticked?

19 A. No. What the environmental statement does is
20 look for environmental effects. That is why it
21 is called an environmental statement, so for
22 instance, there can be can be environmental
23 effects arising from employment, and housing
24 impacts urbanisation, for instance, but the
25 economic effects of this project are set out, and

1 in my judgement, settled in the Air Transport
2 White Paper.

3 Q. Well, I think I am going to have to go back and
4 consider whether I have recorded your position
5 accurately. You agree that in order to weigh the
6 benefits, you have to identify their nature and
7 scale, but you say in order to do that, one
8 simply goes to the sentence in the White Paper
9 and you stop there?

10 A. We are dealing here with a specific and
11 deliberate approach to policy. I have set out at
12 length in my evidence why the government has done
13 this, in order to bring some certainty to
14 decision-making. Where, as a result of that
15 lengthy and consultative process, based on
16 detailed economic forecasting and a number of
17 other matters, the government has reached clear
18 and specific conclusions about the economic
19 benefits and the need for a specific proposal, I,
20 for my part, identify and rely upon that
21 statement of national policy.

22 Q. Yes, but what I am seeking to understand here,
23 you have accepted that one does not weigh the
24 economic benefits of a proposal equally. One has
25 to look at the proposal, whether it is a third

1 runway at Heathrow or a terminal extension at
2 Luton. What I am seeking to understand is how
3 you know how much weight to attach to the
4 economic benefits, and --

5 A. Because --

6 Q. Let me finish. I am not there yet. As I
7 understand your position, Mr Rhodes, you go no
8 further than the sentence in the White Paper that
9 talks about a net gain associated with maximising
10 the use of the existing runway.

11 A. You know that it does not talk about a net gain,
12 and you know that it is not one sentence, but
13 what are we involved in a planning decision
14 supposed to make of an up to date national policy
15 statement which tells us what the benefits are?

16 Q. Well, let us go on --

17 A. We are deliberately not meant to go back and try
18 and unpick that and say, "Oh no, it does not".

19 Q. Well, you know, do you not, that the White Paper
20 did not contain -- we have already agreed this --
21 an analysis of the material that you present in
22 volumes 5 and 6 of the environmental statement?

23 A. It undertook its own detailed analysis. It
24 reached clear conclusions, which carry very
25 considerable weight.

1 Q. We are not talking about weight here. We are
2 talking about what was done and what material --

3 A. We are talking about weight.

4 Q. No, we are not. We are identifying now. We are
5 in the identifying phase. Let us look and see
6 what happened in a little bit more detail,
7 Mr Rhodes. I think it would be helpful to
8 descend to the detail. Back in your proof at
9 paragraph 8.10, page 33, you tell us that
10 appendix 1 to your evidence has been produced by
11 consultants, Tribal. Tribal also produced, did
12 they not, volume 5 of the environmental
13 statement, "Economic Effects".

14 A. Yes, they did.

15 Q. And I presume that the volume 5 document was only
16 produced because it was thought to be relevant to
17 the determination of the application.

18 A. I assume so as well.

19 Q. Good. Because we know, do we not, Mr Rhodes,
20 that when BAA considered that a request in the
21 scoping document went too far, it refused to
22 provide the information and it told UDC it was
23 refusing in document CD24.1.

24 A. It did. I do not recall, but I am not aware that
25 this arose from a scoping request. BAA

1 volunteered this chapter of the ES.

2 Q. That is really a side issue, I think. What we do
3 know, for example, is if we look at volumes 5 and
4 6 -- you will need to take that out now -- CD8,
5 CD9, look at volume 5, paragraph 214, we find an
6 example there -- this is page 2, paragraph 214 --
7 of an issue which BAA refused to consider,
8 because it did not consider it appropriate. That
9 was the opportunity costs of aviation development
10 in relation to alternative economic activities.
11 It was not accepted that that should be examined,
12 because the main issue relates to labour supply,
13 competition covered in volume 6. Tourism points
14 were accepted.

15 So there is a section, is there not, that
16 deals with what should and should not be
17 considered by BAA, and where BAA felt something
18 was irrelevant, it should not be pursued, it told
19 Uttlesford, did it not?

20 A. Yes.

21 Q. Tribal also produced volume 6, together with
22 Emtech; that is the employment and housing
23 document.

24 A. Yes.

25 Q. Your appendix 1 in the separately bound set of

1 appendices that came with the main proof, that is
2 in fact a 36-page detailed report by Tribal,
3 which contains, does it not, Mr Rhodes,
4 considerable additional material not in volume 5?

5 A. It is -- I have not done a direct comparison, but
6 it is not intended to contain material which does
7 not either derive from the environmental
8 statement or from statements of government
9 policy.

10 Q. Well, that was not quite the point, was it? It
11 goes considerably further than volume 5, does it
12 not? I do not think we need to go through it.

13 A. Insofar as it does, it does so by reference to
14 published government policy or government policy
15 documents. That is what it says in
16 paragraph 1.1.1.

17 Q. Indeed it does, and we are going to have a look
18 at those paragraphs. Paragraph 1.1.1. you have
19 just referred us to on page 1:

20 "This report sets out an analysis of the
21 economic benefits of the Stansted G1 project,
22 which are identified, defined, and in some cases
23 quantified in a series of government policy
24 documents and statements. The benefits analysed
25 here are thus those recognised by government

1 policy as the economic benefits of aviation
2 development."

3 And 1.1.2:

4 "The report has been prepared at the request
5 of BAA by Peter Wood, the Director for Economic
6 Development at Tribal Consulting."

7 And it talks about Mr Wood's 25 years of
8 professional experience. Is there any reason why
9 Mr Wood has not been called to speak to this
10 detailed report, presenting material not within
11 the ES?

12 A. I think the principal reason is that, certainly
13 from my perspective, I do not see an explanation
14 of government benefit being an issue for the
15 inquiry. This simply went to identify what those
16 benefits were, as set out in government policy.
17 He is not here producing his own analysis of the
18 benefits. He is drawing from SERAS and ATWP
19 documents what those benefits are, and it is
20 certainly my view that the existence or not of
21 economic benefits from maximum use are not an
22 issue for this inquiry, because they are settled
23 in the Air Transport White Paper.

24 Q. Well, there is obviously an issue between us on
25 that, so we need to explore it further.

1 A. I understood that to be accepted by Mr Harborough
2 directly in cross-examination.

3 Q. No, no. The need case is one thing. The
4 benefits case is another one.

5 A. No, the benefits as well --

6 Q. Oh, I am sorry.

7 A. -- were directly accepted in cross-examination as
8 being settled in the White Paper.

9 Q. What one needs to do is identify what they are in
10 the context of this application, Mr Rhodes, and
11 that is what we have to do, and that is why I
12 need to examine what has been going on with your
13 appendix 1 report. I need to see how it departs
14 from volume 5 of the environmental statement, so
15 we can get on and do that? Do you have volume 5
16 of the environmental statement still to hand?
17 Page 1, paragraph 1.1.3; we will see what the
18 District Council was being told about this volume
19 provided by BAA to inform the determination of
20 the application:

21 "This volume provides an overview of the role
22 of airports in facilitating economic activity and
23 examines the contribution that Stansted G1 could
24 make to the economies of the east of England and
25 London in particular.

1 "The volume begins with an overview of key UK
2 regional economic policies before setting out the
3 position of Stansted Airport within the London UK
4 airport system. The volume provides an overview
5 of the east of England and London economies and
6 concludes by examining the role of air transport
7 as a facilitator of economic activity and how the
8 proposed development at Stansted could contribute
9 to these economic activities."

10 So that is what this volume is seeking to do:
11 plainly providing information about the economic
12 case being put in support of the proposal; right,
13 Mr Rhodes?

14 A. Correct. Just one point of qualification, which
15 is that this is contained, as you know, within
16 the environmental statement. The economic and
17 planning case for the project; the environmental
18 statement is not the place to advocate
19 development, it is a place to assess effects.

20 The economic and planning case for the
21 application is set out in the planning statement.

22 Q. It is your environmental statement; it is BAA's
23 environmental statement. I do not understand
24 this volume to have been withdrawn as
25 inappropriate for inclusion within an

1 environmental statement? No.

2 If we just turn through the document, we have
3 the review of scoping and consultation in
4 section 2, and we have already looked at that
5 point, where BAA said, "No. Too far and we are
6 not going to do that". Section 3 is the policy
7 framework, national policies. Yes, we have the
8 White Paper there discussed, have we not, 311?
9 Regional policies, London; then section 4 on
10 page 6, "The Role of Stansted Airport: a
11 Snapshot". Section 5, page 11, we have the
12 regional economic overview and then 6, the
13 assessment of economic effects. And 6.1.1:

14 "The air transport industry's most important
15 economic contribution is through its impact on
16 the performance of other industries, and its
17 facilitation of economic activity."

18 So that is a plain statement of Tribal's view
19 on what the air transport industry's most
20 important economic contribution is, yes?

21 A. It is also consistent with statements of
22 government policy on the same point.

23 Q. So that was Tribal's view back in April 2006. I
24 presume that view has not changed?

25 A. No.

1 Q. What this section then goes on to do is look at a
2 series of indicators, whatever one chooses to
3 call them, metrics to assess the economic effects
4 which are prayed in aid in support of the
5 development. The first of those is 6.2, the
6 business location decisions. Now, just looking
7 at the heading so we get a picture of the
8 document, page 16, 6.3, "Foreign Direct
9 Investment". Page 18, 6.4, "International
10 Trade". Page 21, 6.5, "International Tourism"
11 and then page 25, 6.6, "Productivity
12 Improvements" and then "Conclusions" follow. So
13 those are the heads, are they not, the five heads
14 under which the economic effects are examined?

15 A. Yes, they are.

16 Q. One should note, perhaps, whilst reading through,
17 passing over that document, that it is
18 section 6.5 on page 21 going through to page 24,
19 that is the section that contains the source
20 material for conclusions about the tourism trade
21 issues that are discussed in Mr Harborough's
22 proof. It is where the source material is to be
23 found.

24 A. Yes. The District Council chose to pick that and
25 the issue of local employment to reach its own

1 conclusion that their economic effects were not
2 sufficient.

3 Q. Now, with that in mind, just look back to your
4 appendix 1, the other Tribal document, and we
5 have looked at page 1 already, but it worthwhile
6 just going back to 1.1.1, the first paragraph at
7 the top of the page. One detects a distinct
8 change of tone, does one not, Mr Rhodes, in this
9 report? This report loses no opportunity to
10 mention government policy documents and
11 statements -- and one sees that that is indeed
12 clear from paragraph 1.1.1. -- referring to:

13 "A series of government policy documents and
14 statements. The benefits here are thus those
15 recognised by government policy as the economic
16 benefits of aviation development."

17 That is right, is it not? A very heavy
18 emphasis on government policy in contrast to the
19 first Tribal report.

20 A. Well, two things to say: one is yes, I agree with
21 you, and the reason for that is because that is
22 what I asked Tribal to do.

23 Q. It is, is it?

24 A. And the second is that the two reports were
25 produced for different reasons and it is not

1 surprising that there are differences in approach
2 within them.

3 Q. So if one looks at section 2 of this appendix 1,
4 "Policy Framework" there is then a really very
5 extensive regurgitation of government policy. It
6 goes on, page 2, 3, 4, 5, 6, 7, 8. Did you have
7 a hand in writing any of that?

8 A. I did not write any of it, but I was certainly
9 consulted by Tribal about its preparation.

10 Q. Did you review it?

11 A. Yes.

12 Q. And then after all that policy preamble, it
13 continues on and on to page 12, I think. We get
14 to section 3 on page 13, which is the section
15 about the benefits, and then we get into a
16 completely new section defining the benefits,
17 which is absent, is it not, from the
18 environmental statement, volume 5, altogether?

19 A. It is. It is an exposition of what the
20 government did as part of its economic appraisal
21 of the SERAS and White Paper process. It seeks
22 to set out what the calculated benefits were.

23 Q. Yes. If we turn through this section, it is
24 really page 15 to 18, we have not come to
25 anything that is discussed in the volume 5 report

1 yet. So it is page 15 to 18, we are on to this
2 analysis focusing on the user, of the benefits to
3 the user, which as you rightly say, is discussed
4 in the White Paper.

5 A. Yes.

6 Q. Perhaps if we look back to 316, all within this
7 section on page 13, that sets the tone, really,
8 for what this section is about. Paragraph 3.16
9 on page 13:

10 "The framework of economic analysis which is
11 used in the measurement of the direct benefits to
12 users in SERAS may be explained briefly as
13 follows. Goods and services, including aviation,
14 provide benefits to their users. Generally, the
15 benefit of a service to a user can be measured by
16 the maximum amount the user is willing to pay for
17 the service. Where the benefit to the user is
18 greater than the amount that user has to pay then
19 the user experiences a net benefit from the
20 service. Provided that the costs paid by the
21 user reflect the costs to society of producing
22 the good or service then society also experiences
23 a net benefit from production and use of the good
24 or service. Economic theory argues further that
25 each successive unit of a good or service is

1 valued slightly less than the previous unit and
2 that users will purchase a good or service just
3 up to the point at which the benefit of one more
4 unit is equal to the cost."

5 So, that is the economic theory, is it not?

6 A. It is, yes. The reason that this is here is
7 because I asked Tribal if they would please
8 explain for the benefit of me, and others, what
9 user benefits are, so that we could understand
10 the figures that are contained within the SERAS
11 assessment.

12 Q. That is what Mr Harborough calls in his evidence
13 the theoretical issue, is it not? That is why he
14 uses the word "theory", because it depends on
15 economic theory?

16 A. Most things depend on economic theory when one is
17 talking about economics. What Mr Harborough also
18 accepted, and I think is common ground, is that
19 this is the approach, which the government
20 advocates, to assessing the economic effects of
21 infrastructure projects. It is not something
22 that has been dreamed up for this purpose, it is
23 the standard approach. But it does not, as the
24 evidence explains, it does not account for all of
25 the benefits. The Transport White Paper and

1 SERAS are both clear that it tends to
2 underestimate the benefits, perhaps by a
3 significant margin.

4 Q. Can you just explain why this lengthy discussion
5 is wholly absent from volume 5 of the
6 Environmental Statement on economic effects?

7 A. I was not party to the preparation of volume 5,
8 so I cannot answer that directly.

9 Q. Did you not review the Environmental Statement,
10 Mr Rhodes, before it went in?

11 A. I did, yes. I was not party to the preparation
12 of that chapter in quite the same way as I was
13 party to the preparation of volume 1. But what
14 the Environmental Statement would seek to do is
15 to identify the direct effects where it can.

16 Q. So, volume 5 was prepared with perhaps rather a
17 freer hand by Tribal than this appendix 1?

18 A. No. They were both prepared with a free hand,
19 but they were prepared for different purposes.

20 Appendix 1 is prepared to explain the benefits,
21 which the government has identified, from
22 aviation and from this specific project.

23 Volume 5 is prepared for the purpose of the
24 environmental assessment.

25 Q. Yes. But there is no doubt, is there, that

1 Tribal, in volume 5 of the Environmental
2 Statement, as experienced economic advisors,
3 attached considerable weight to what one might
4 call the real economic metrics, which would
5 actually have a regional and local effect?

6 A. I do not accept the word "real" in the sense that
7 user benefits are apparently "unreal", because
8 they do form the basis, the acknowledged basis,
9 the proper approach to assessing the benefits of
10 infrastructure. They perhaps result in less
11 immediately identifiable direct effects than for
12 instance looking at employment or looking at
13 specific investment, but in terms of the overall
14 economic benefit of an infrastructure project,
15 the user benefits are clearly very important.

16 Q. But they did not occur to Tribal; it did not
17 occur to them to mention them in volume 5, did
18 it?

19 A. I do not know whether they are mentioned, it
20 certainly --

21 Q. They are not.

22 A. It certainly occurred to me to ask Tribal to
23 explain more clearly in appendix 1 what the
24 government had done.

25 Q. Well, if we look at your appendix 1, of course by

1 the time we have been through the economic
2 theory, we do eventually get to the matters that
3 were the subject of the volume 5 report submitted
4 to the council at about page 20, do we not? I
5 think we then get back into the headings that we
6 picked up from volume 5. If one looks at
7 page 20, there we get on to the Business Location
8 Decisions.

9 A. Yes.

10 Q. A familiar heading from the Tribal volume 5
11 report. And then page 22 we are on to Foreign
12 Direct Investment; the next page, International
13 Trade again; and International Tourism, a rather
14 more truncated version than we saw in volume 5,
15 Mr Rhodes, is there not, on that point? A much
16 more truncated version of International Trade and
17 International Tourism. Yes?

18 A. Yes, I think the final sections of appendix 1 are
19 more in the way of summary.

20 Q. I see. Then the last matter again, we saw from
21 volume 5, the productivity issue. Then one goes
22 on in section 3.4 of this appendix 1 document to
23 look at the employment matters that are discussed
24 in more detail in volume 6 of the Environmental
25 Statement.

1 A. Yes.

2 Q. So, it is right, is it not, looking at your
3 appendix 1, that there is a complete change of
4 emphasis, is there not, Mr Rhodes, as to what is
5 important in economic terms, from the
6 Environmental Statement volume 5 chapter and this
7 Tribal report produced for the inquiry?

8 A. No, that is wrong.

9 Q. Well, the inspector can judge whether it is wrong
10 or right.

11 Can we look at your proof now please? I want
12 to pick up the reference you are dying to get on
13 to, 8.13, and here we have you quoting, quite
14 properly, from paragraph 11.26 of the White Paper
15 where we see the reference to:

16 "Making full use of Stansted would generate
17 large net economic benefits."

18 And your paragraph 8.13 then picks up the
19 reference, does it not, in paragraph 11.27 of the
20 White Paper, which we probably ought to turn up
21 so we can follow through the logic in your
22 paragraph 8.13. Would you turn up CD87, which
23 miraculously we have not looked at yet, to
24 identify what is said in paragraph 11.27? Which
25 is on page 114, for those who have the same

1 version as me. The sentence that you cite at the
2 beginning of your paragraph 8.13 is the familiar
3 one in the middle of 11.26, "Making full use of
4 Stansted", et cetera. Then you say, in your
5 paragraph:

6 "A footnote on that page (page 114) identifies
7 that the Net Present Value of the benefits from
8 the G2 proposals might be in the order of
9 £9 billion."

10 Now, footnote 4, we can see, arises in
11 paragraph 11.27, does it not?

12 A. Yes.

13 Q. It is about two-thirds/three-quarters of the way
14 down is footnote 4. That is in the context of a
15 paragraph dealing with the second runway, is it
16 not?

17 A. Yes.

18 Q. So it is second runway and about halfway down:

19 "Traffic would therefore grow rapidly, and the
20 new runway would generate substantial net
21 benefits to the national economy."

22 Then footnote 4 takes one to the figures and
23 that little footnote ends, "Of the order of
24 £9 billion."

25 A. Yes.

1 Q. So that is what happened, that is what your
2 paragraph 8.13 is seeking in a compressed form to
3 describe to the reader. What you have done is
4 you have instructed Tribal to do a similar
5 calculation for G1, which appears in your
6 appendix 1 at page 16. At least the result
7 appears there.

8 Go back to your appendix 1 and see what has
9 happened. You have asked Tribal to do a similar
10 calculation, the NPV calculation, the economic
11 theory, the G1, which is reported at
12 paragraph 3.2.10 on page 16 of the appendix. Is
13 that right?

14 A. Yes. Just to be clear, it is not wholly Tribal's
15 calculation. What Tribal has done is used
16 information published by the government to derive
17 what the government has assessed the benefits to
18 be.

19 Q. There are no great surprises there. I am sure
20 they have had to rely upon sources that are
21 produced nationally in order to make their
22 calculations.

23 A. You would have seen from the appendix that from
24 government publications they can identify what
25 the benefit of maximum use at Luton, Stansted and

1 Gatwick is, and then Tribal's element of the
2 calculation is to interpolate that or apportion
3 it to Stansted maximum use.

4 Q. Yes. So what you have done is, as I have said,
5 you sought to provide a comparable figure to the
6 £9 billion, which you think relates to G2, for
7 G1, and that is the £2.9 billion in
8 paragraph 3.2.10, and it appears elsewhere in the
9 appendix 1 document, it appears on the next page
10 at 3.2.14 and reported in your proof at 8.13.

11 Now, that figure appears nowhere in the
12 Environmental Statement or in the supporting
13 material, does it?

14 A. No.

15 Q. As I understand it, from what you have just told
16 me, both the £9 billion and your £2.9 billion
17 refer to the calculation of the benefits to the
18 user that one is familiar with from reading the
19 White Paper?

20 A. Yes.

21 Q. Just going back to paragraph 11.26 on page 114 of
22 the White Paper, that sentence that you have
23 quoted at me already a number of times:

24 "Making full use of Stansted would generate
25 large net economic benefits."

1 There is no quantified analysis of those large
2 net economic benefits in the White Paper, is
3 there, or in CD113?

4 A. Not specifically for the maximum use of the
5 runway at Stansted, no. But I do not understand,
6 and I certainly have not seen any criticism of
7 the approach set out in appendix 1, that on a
8 comparable approach to the approach taken for G2
9 those would approximate to the user benefits for
10 G1.

11 Q. The only area of quantification that you sought
12 to provide in this report is in relation to the
13 calculation of the benefits to the user. That is
14 the only, if I look through this appendix 1
15 report, that is the only quantification that you
16 attempt.

17 A. It is. Just to make two points. One is that I
18 think that it is the only benefit, which the
19 government seeks to quantify as well. The Air
20 Transport White Paper says at paragraph 2.13 that
21 the most significant quantifiable benefit would
22 be effectively user benefits.

23 What I have identified in my evidence at
24 paragraph 8.16, from Oxford Economic Forecasting,
25 is their assessment that user benefits are likely

1 to be dwarfed by wider national benefits, which
2 might be in the region of four times greater than
3 the calculated user benefits, and indeed the
4 consultation draft of the Air Transport White
5 Paper made very much the same point, that the
6 user benefits are likely to significantly
7 underestimate the economic benefit of increased
8 aviation capacity.

9 But, they are those (a) which are susceptible
10 to calculation and (b) perhaps, because of that,
11 they are the ones traditionally used for
12 assessing infrastructure projects, whether it is
13 worthwhile to build something or not.

14 Q. Yes. Well, that is what you have done. I think
15 the answer to my question was yes, that is the
16 only quantification of that sentence in 11.26
17 that you attempt. You say, well, you think that
18 is the only one that the government undertook
19 itself in the context of the second runway.

20 Of course, we have a lot more information in
21 your Environmental Statement volume 5, of course,
22 where other priorities are identified. We can
23 come on to those in a moment.

24 Can I just finish the point from your proof,
25 if I may? We are on page 34 of the proof,

1 maximum use point, and you say there that:

2 "The option which generated the highest
3 Benefit Cost Ratio (BCR) was the option which
4 made maximum use of existing capacity."

5 And you refer back there, I think, to the
6 material presented in CD113. I cannot remember
7 if I put CD113 on the documents list. Maybe I
8 did not. But that is the consultation document
9 that preceded the White Paper.

10 MR BOYLAND: Well, we have it out anyway.

11 MR HILL: Thank you. Could you just help me with the
12 reference to the Benefits Cost Ratio of 5.35
13 referred to in that, where that comes from the
14 CD113 consultation?

15 A. I think the answer to your question is contained
16 at paragraph 3.2.12 of my appendix 1.

17 Q. Of your appendix 1?

18 A. My appendix 1.

19 Q. I am just trying to relate it through to the
20 analysis in the consultation paper, Mr Rhodes; I
21 do not know whether you are able to help me with
22 that.

23 A. I do not know whether the consultation paper
24 contained the Benefit Cost Ratio, but it was
25 certainly contained within the additional

1 analysis of passenger forecasts of December 2003
2 published at the same time as the White Paper.

3 Q. The maximum use forecasts and the economic
4 analysis that accompanied them, can I just be
5 clear, are these the analyses that one finds
6 throughout the consultation document with the
7 label "Maximum Use" attached to them? It just
8 says, "Maximum Use".

9 A. They may be, although the detailed analysis comes
10 from other documents, as I have explained.

11 Q. Yes. Could I just take you to CD113, so we do
12 not waste time on this? This is a short point, I
13 just want to make sure I understand the origin of
14 the material properly.

15 You have your CD113? This is the
16 February 2003 version. Table 14.6, for example,
17 on page 128. One sees at the top of the list of
18 components or options that are examined, "Maximum
19 Use". Then there is the calculation of the
20 benefits, the costs and the net, et cetera.

21 I just wanted to be sure that when you refer
22 to "Maximum Use", it is the maximum use of all
23 the airports that has been examined, rather than
24 an option that just has maximum use at Stansted.

25 A. That is correct, and then apportioned by Tribal

1 to Stansted.

2 Q. I see. Good, I understand that. Now, continuing
3 on this matter, and we will see if we can finish
4 this issue and pause before we get to jobs, if
5 that is all right with you, sir. I have about
6 two pages, it does not help very much, does it,
7 but it is sort of, let us say, about five or ten
8 minutes.

9 MR BOYLAND: Yes, that is fine. A page is meaningless
10 in terms of time.

11 MR HILL: It is indeed. It is just as opaque for me
12 as it is for Mr Humphries.

13 You will recall that my re-examination of
14 Mr Harborough was interrupted on the basis, when
15 we were dealing with the issue of what the White
16 Paper considered, when we were considering
17 whether the White Paper proceeded upon the basis
18 of a full analysis of the economic benefits of
19 maximum use of the existing runway at Stansted.

20 Now, we have looked at your derived
21 £2.9 billion figure using the benefits to the
22 users and the theory described in your
23 appendix 1. Beyond that, where should I look in
24 the documentation for a full analysis of the
25 benefits of maximum use of the existing runway at

1 Stansted, in either the White Paper or the
2 consultation document?

3 A. I do not have a prepared answer to that question,
4 because there are a series of documents produced
5 as part of the SERAS exercise that looked at the
6 economic appraisal of different options,
7 including maximum use, and I do not have a list
8 in front of me. There is some text, as you will
9 know, within the CD113 draft February document,
10 but there are substantial other exercises
11 published as part of SERAS, which look
12 specifically at economic effects.

13 Q. I am not looking at the generalised picture, I do
14 not mean anything pejorative by saying "the
15 platitudes", I mean the specific economic
16 benefits of maximum use of the existing runway at
17 Stansted.

18 Now, you told me a moment ago that you thought
19 the only one of these that had been quantified
20 was the benefits to the user calculation. You do
21 not want to change that answer, I suspect,
22 Mr Rhodes?

23 A. Quantified in terms of a calculation of net
24 present value, that is my understanding, yes.
25 There are, for instance, quantified employment

1 effects.

2 Q. Well, we are coming on to jobs. But in terms of
3 the matters discussed, for example, in volume 5
4 of the Environmental Statement, is there
5 something tucked away in an appendix that I
6 should have found that deals with the economic
7 case for maximisation of an existing runway at
8 Stansted?

9 A. Well, I would -- I am sorry it is not very
10 helpful, and perhaps I was going to say I can do
11 something over lunch, but it is probably easier
12 for those who are advising, who I will not talk
13 to, who are directly involved, who are more
14 familiar with the detailed economic appraisal in
15 the series of SERAS documents. It may be a long
16 answer to your question.

17 Q. Well, perhaps we could, to save the inspector's
18 time, we could agree a note on this to add to the
19 inquiry on what material there is, or there was,
20 informing the White Paper, which analysed the
21 specific economic benefits of maximum use of the
22 existing runway at Stansted, over and above the
23 NPV that we have discussed already.

24 A. I think that is a helpful suggestion.

25 Q. We will do that. Looking back to your proof,

1 where you seek to provide more support for your
2 case on page 35, and I do not say that in a
3 pejorative way, by discussing the general points
4 about what aviation contributes to the economy,
5 there is no -- I do not think there is in your
6 proof, or indeed appendix 1, any further analysis
7 of what I have called, for simplicity, the real
8 economic gains, beyond what was originally
9 produced in volume 5, is there?

10 A. Yes. You know I have not accepted your position.

11 Q. I understand you have not. But there is not
12 anything beyond volume 5 of the ES in this
13 lengthy proof or in the appendix?

14 A. No, there is not. The approach is not dissimilar
15 to that which was taken by York Consulting when
16 advising the District Council on the previous
17 application, and the conclusions are very
18 similar.

19 Q. Indeed. All that catalytic development they
20 promised, yes. Can we look at CD113, the
21 consultation document, for two specific
22 references I would like your help with? These
23 are on page 130 and 131 of CD113.

24 Now, you have told us you have no criticism at
25 all of either the White Paper or the consultation

1 document. Paragraph 14.35, which is under the
2 heading of the Wider Economic Benefits, one
3 reads:

4 "The potential effect of increased airport
5 investment and air services on productivity
6 across the economy can be gauged from the total
7 additional business travel that is made
8 possible."

9 And 14.36:

10 "One way of measuring the effects of
11 additional airport capacity on foreign direct
12 investment is to consider the number of business
13 trips by foreign residents shown in the first
14 column."

15 Now, I presume neither you nor Tribal disagree
16 with those statements, and if you had done you
17 would have said so, would you not?

18 A. I am not sure whether it has been our task to
19 address every statement, but those --

20 Q. You do not disagree with them, do you?

21 A. No, I do not.

22 Q. What they point to is the relevance in
23 considering this wider economic case of total
24 additional business travel, is it not, Mr Rhodes?
25 That is what it does? Yes?

1 A. It is my fault entirely, could you just repeat
2 the question? I am sorry.

3 Q. What those paragraphs direct one to are
4 examination of total additional business travel
5 in 14.35 and then total additional business trips
6 by foreign residents in 14.36.

7 A. Yes, as clearly being important considerations.

8 Q. Clearly important considerations, yes. Then, if
9 we turn please to volume 5 and page 9, in the
10 context of paragraph 14.35, which is the total
11 additional business travel, we see Tribal's
12 analysis in table 4 and the business row is the
13 central row on the table, one is comparing with
14 the 25 MPPA case, 5.2 million passengers per
15 annum, with the 35 MPPA case, 5.5 million, that
16 is the business passengers predicted, and the
17 final column, plus 0.3 million. It says
18 percentage change. I do not think that is right,
19 is it? It should be absolute numbers on the top
20 of that column?

21 A. You are right.

22 Q. So what we have is we have plus 0.3 million
23 business passengers and one is looking at that as
24 a proportion of the total passengers increase,
25 this is non-transfer 6.7 million immediately

1 below the 0.3 million figure, and it is about
2 4 per cent, is it not, of the increase in
3 non-transfer passengers?

4 A. I have not worked it out.

5 Q. I am sure someone will tell me if that is
6 incorrect.

7 So we have an increase of about 4 per cent out
8 of the total non-transfer passengers predicted
9 who will be travelling for a business purpose.

10 Then 14.36 in the consultation document was
11 referring to the foreign business travellers. If
12 we turn to the next page of volume 5 and just
13 pick up the figures there, table 5 on page 10, we
14 need to look first of all at the central block,
15 and if we look at the 2004 25 MPPA case, the
16 foreign business line is 1.6 million. Yes, the
17 total at the end?

18 A. Yes.

19 Q. Then, for the 35 MPPA case, the case that you are
20 supporting, we are down by 100,000 to 1.5 million
21 passengers per annum, and those figures are
22 reflected in the table on the top of the opposite
23 page, table 6, where one has the total
24 -0.1 million foreign business passengers.

25 So, the case that you are promoting sees a

1 reduction of 0.1 million foreign business
2 travellers, compared with the base case.

3 A. That is what the table says. I think there may
4 be a curiosity due to rounding in that, which you
5 might want to ask Mr Maiden about, but that is
6 what the table says, yes.

7 Q. That is what the table says and if one applies
8 that figure to the principle that you agreed a
9 moment ago in the consultation document at
10 paragraph 14.36, it follows, does it not, that
11 one would expect to see a reduction in foreign
12 direct investment when compared with the base
13 case in the G1 scenario?

14 A. No.

15 Q. Well, that is the consequence of applying the
16 principles established in the White Paper.

17 A. No, it is not. What 14.36 says is one way of
18 measuring the effect would be to look at that
19 issue. It certainly does not suggest that it is
20 deterministic and it would be my judgement
21 that -- and the difficulty with this is the
22 constant attempt to try to quantify. What the
23 government is very clear on is that foreign
24 direct investment is encouraged by connectivity
25 between this country and other countries as part

1 of the global economy.

2 Certainly, restricting capacity is most
3 unlikely. I do not see how it could be claimed
4 that restricting capacity is a way of encouraging
5 foreign direct investment.

6 Q. Well, these are your client's figures, Mr Rhodes,
7 and we are simply applying the principles
8 identified in the White Paper documentation and
9 consultation document, which you support.

10 Have you advanced in your proof any other way
11 of measuring the effects of additional airport
12 capacity on foreign direct investment? You have
13 not, have you?

14 A. No, I have not, neither have I thought it
15 necessary to do so. The government's position is
16 very clear, it is set out in the Air Transport
17 White Paper.

18 Q. Indeed, and I am putting a point to you that
19 arises from the consultation document, which
20 preceded the White Paper, Mr Rhodes.

21 A. Well, I am sure the inspectors have this point.
22 What you are doing is being very selective in the
23 references you put to me. It is one way of
24 measuring the effect.

25 There is extensive reference within the White

1 Paper and other supporting documents to the vital
2 importance of increasing aviation capacity in
3 order to enhance trade between nations, part of
4 that being foreign direct investment. What we
5 are talking about here is an increase of 300,000
6 business trips; 300,000 business trips per annum
7 through the airport.

8 Q. And a reduction in the foreign business trips,
9 Mr Rhodes.

10 A. On the basis of that table, yes.

11 Q. Yes, a reduction. A reduction that is not
12 mentioned or analysed or discussed anywhere in
13 the Environmental Statement or in your proof of
14 evidence, is it? Is it? Not mentioned?

15 A. It is not mentioned in my evidence, no. I do not
16 judge it to be particularly important. As you
17 know, neither the government, nor BAA, have
18 sought to quantify the overall economic benefits
19 of the development. Those which can be
20 quantified are the user benefits.

21 Q. Last point before we break, it is right, is it
22 not, that BAA has done no research work to
23 establish a specific catalytic effect on the
24 local and regional economy with Stansted at
25 35 MPPA as opposed to 25 MPPA?

1 A. BAA has not sought to go out and re-prove the
2 case, which is set out in the Air Transport White
3 Paper, which is that the maximum use of the
4 runway at Stansted would be an important driver
5 for the regional economy. Neither has it sought
6 to re-prove what is said by the government in the
7 proposed changes to RSS that it may have
8 catalytic effects for the regeneration of Harlow.
9 That is not an obligation on BAA.

10 If the council wants to make, as its case,
11 that it does not agree with clear statements in
12 the RSS or in the Air Transport White Paper, with
13 respect, the burden falls on the council.

14 Q. We are trying to identify -- to identify what the
15 benefits are of this proposal, Mr Rhodes. I put
16 my question to you once more. BAA has done no
17 research work, has it, either as part of this
18 application or independently, to establish a
19 specific catalytic effect on the local and
20 regional economy of Stansted at 35 MPPA as
21 opposed to 25 MPPA. The answer is no, is it not?

22 A. The answer is no, because BAA does not need to do
23 so.

24 MR HILL: Sir, that is a convenient moment.

25 MR BOYLAND: Thank you very much. It certainly is.

1 Just before we do adjourn, could you give me an
2 indication of how we are doing time-wise? You
3 have had about 23/4 hours of your estimated time.
4 MR HILL: Certainly not going to go beyond my upper
5 band.
6 MR BOYLAND: Not beyond your upper band, but are we
7 likely to approach it?
8 MR HILL: I should think I probably have about another
9 hour to an hour and a half.
10 MR BOYLAND: Very well. Thank you. We will adjourn
11 then until 2.05 pm. Thank you.
12 (1.07 pm)
13 (The short adjournment)
14 (2.07 pm)
15 MR BOYLAND: Thank you. The inquiry is resumed.
16 Mr Hill?
17 MR HILL: Thank you very much, sir.
18 Cross-examination by MR HILL (continued)
19 MR HILL: Good afternoon then Mr Rhodes. We paused
20 just before turning to the issue of jobs growth.
21 I presume you agree that jobs growth associated
22 with this particular proposal is relevant to the
23 inspectors' deliberations and not a generalised
24 statement that airports are good because they
25 produce jobs?

1 MR RHODES: I agree.

2 Q. And indeed, BAA and UDC have gone to the trouble
3 of agreeing specific figures in the statement of
4 common ground?

5 A. Yes.

6 Q. The figure we have is 3,800 direct and indirect
7 jobs for G1?

8 A. Yes.

9 Q. And the RSS regional target, I think you give us
10 in the most recent proposed changes in your proof
11 at page 25, paragraph 6.3, I think that sits at
12 452,000 jobs for the period 2001 to 2021.

13 A. Across the region, that is right.

14 Q. Across the region.

15 A. There is of course a separate target for the
16 sub-region.

17 Q. Indeed so. It is important to note, of course,
18 that employees do travel to Stansted from a
19 variety of locations across the region, do they
20 not?

21 A. Yes, they do.

22 Q. Indeed, they will have to do so increasingly if
23 G1 is permitted, will they not, in circumstances
24 where, for example, we only have 300 unemployed
25 in Uttlesford? They will have to come from

1 further a field?

2 A. That is true, yes.

3 Q. As I understand it, you are not suggesting in
4 your evidence that a large proportion of those
5 who live in Uttlesford, but commute to London or
6 Cambridge, are likely to give up their jobs in
7 the city or their high-tech jobs at Cambridge and
8 go to work for Ryanair or Costa or Burger King or
9 whatever, at the airport?

10 A. I am not suggesting a large proportion of those
11 types of people would, no. But, to the extent
12 that some are likely to, that would be a benefit.

13 Q. Now, so far as the RSS is concerned, I think we
14 have already agreed, and forgive me for putting
15 it again if we have, that the RSS EiP panel did
16 not consider as the specific economic case, for
17 the maximisation of the use of the existing
18 runway at Stansted?

19 A. May I ask, do you mean an economic case or an
20 employment case?

21 Q. Economic and employment case. I am not
22 suggesting they did not consider the jobs issue
23 generally, and they obviously considered it in
24 the context of R2.

25 A. The panel did have the benefit of employment

1 figures for Stansted, maximum use and second
2 runway, in the context of data about the balance
3 between housing and employment in the sub-region.

4 Q. Yes. That was the full extent of the data they
5 had, I think, was it not?

6 A. The panel had the benefit of a number of
7 background documents about employment
8 calculations, including two or three specific
9 reports about airport-related employment
10 development; the inquiry has heard reference to
11 the Halcrow and Cambridge Econometrics reports.
12 Those, and other calculations of the employment
13 need, were provided to the panel, as were
14 calculations, sub-region by sub-region, of
15 employment requirements.

16 Q. Yes. I think we are all familiar with that and
17 some of those documents are before the inquiry.

18 Could we look back to CD76, please? Because
19 there is a particular point I want to understand,
20 arising from page 116. If you could turn within
21 116 to paragraph 4.36 please? This is where we
22 read, in the second part of paragraph 4.36 -- we
23 have been here before Mr Rhodes, not with you,
24 but during the course of the inquiry:

25 "The substantial growth in housing at Harlow

1 should provide for a growing number of Stansted
2 employees to live there, from where they can
3 reach the Airport conveniently by public
4 transport."

5 So far as the RSS is concerned, it is wrong,
6 is it not, to suggest that Harlow is simply
7 referred to as a location for catalytic
8 development, which might gain some advantage from
9 the presence of the airport ten miles or so away?

10 A. Yes. There are other references, of which this
11 is one.

12 Q. That reference plainly anticipates direct
13 employment at the airport by those living in
14 Harlow?

15 A. Yes.

16 Q. I think we find a similar point in your proof,
17 paragraph 6.14, page 26, and I think you are more
18 or less quoting there, are you not, from
19 paragraph 4.36 of the RSS? You use the same
20 phraseology, "From where they can reach the
21 airport conveniently by public transport", for
22 example.

23 A. Yes.

24 Q. Now, we have seen a long list of employment
25 initiatives, put certainly by my learned friend

1 Mr Humphries to Mr Harborough, the various things
2 that BAA Stansted does to engage with the local
3 jobs market.

4 Why is it, Mr Rhodes, that the number of
5 employees at the airport who live in Harlow
6 remains so stubbornly low?

7 A. I think there are two or three reasons. The
8 first is that the figure that is before the
9 inquiry is probably out of date. My
10 understanding of the figures that have been so
11 far given in evidence, the 170 or 190, are that
12 they derive from an employment survey of, it may
13 have been 2003 or 2004, I cannot recall.

14 Q. Can I stop you there? I will obviously let you
15 complete your answer, but the 170 and 190 are
16 BAA's predicted extra employees coming from
17 Harlow, they do not refer back to 2003, I do not
18 think, or anything along those lines.

19 A. I understand. Where they do derive from, I
20 believe, because I have asked for my own
21 information, they derive from a survey in, I
22 think it is 2004, that 6 per cent of employment
23 at Stansted comes from Harlow and that 6 per cent
24 has been applied to the increment. I think there
25 are -- and it has been applied within the context

1 of the transport assessment; that is where the
2 figures have been derived in order to assist the
3 understanding of services required from Harlow.

4 I think there are two things to say about
5 that. One is firstly that as at today the figure
6 is almost certainly higher, but we do not know,
7 because two things have happened. The train
8 service has improved since that percentage was
9 discovered, in that the Stansted Express, since
10 December 2005, now stops three or four times an
11 hour at Harlow. Secondly, the principal bus
12 route, the 510, has increased its frequency and
13 is due to increase its frequency again in the
14 summer of 2007.

15 The second point, of course, is that there are
16 employment initiatives, as you say, in Harlow.
17 One would expect that they are starting to bear
18 fruit now, but we do not have up to date survey
19 information.

20 Certainly, all those who undertake the course
21 at Harlow College sponsored by BAA are guaranteed
22 interviews at the airport and there is some
23 information about the number that are employed at
24 the airport.

25 The third point is that over time one would

1 expect -- I would expect that the figure may well
2 increase and may well increase quite
3 significantly. Indeed, that is also the
4 expectation of the Secretary of State.

5 Q. That is all very interesting. The 6 per cent
6 that you are working on, and that is part of the
7 figures presented to this inquiry, is based on
8 the most up-to-date information available?

9 A. Correct.

10 Q. You have, I am sure, seen the Harlow District
11 Council's consultation response to this
12 application. Do you have any explanation for why
13 it is rather lukewarm about these proposals?

14 A. Yes, I have seen it, and what it sets out is a
15 series of conditions and controls that the
16 council would like to see, including a suggestion
17 that there should be a regeneration strategy,
18 which looks at wider regeneration issues, but
19 certainly includes the relationship between
20 Stansted and Harlow.

21 BAA has a good working relationship with the
22 council and indeed sits on the local partnership.
23 The business forum includes Harlow as well. But
24 I have not spoken to Harlow directly about the
25 warmness of their interest.

1 Q. I would put to you the points that Mr Harborough
2 raised when he was considering these matters, as
3 to why the percentage of employees, even given
4 growth up to approaching 25 MPPA, remains so low.
5 It is right, is it not, that the station in
6 Harlow is extremely inconvenient for most of the
7 town, located right on the northern fringe of the
8 town in Stort Valley?
9 A. That much is true, but of course it is fed by
10 local bus services.
11 Q. Yes. So, one has to get a bus, which may be a
12 20-minute journey from parts of the sprawling
13 Harlow metropolis, which you no doubt have
14 enjoyed getting lost in as much as me.
15 A. It is not that difficult to get from Harlow to
16 Stansted if one wanted to.
17 Q. No, we are talking about getting to the station
18 from Harlow.
19 A. No, I understand.
20 Q. Then one gets the train service that Mr Joseph --
21 A. It takes you direct to Stansted, which runs every
22 15 or 20 minutes.
23 Q. A train service that Mr Joseph of the London
24 Thames Gateway partnership described last week as
25 unacceptable.

1 A. Well, that is not my view, and the inspectors
2 will reach their own view about that.

3 Q. Well, we will no doubt come back to some of these
4 issues in the context --

5 A. I think the significant point about that is
6 insofar as the train is busy at times of the day,
7 it is busy in the other direction. We are
8 talking about commuting from the south to the
9 north, to Stansted from Harlow.

10 Q. Yes, of course Mr Joseph was talking about that
11 as well, with his potential catchment, travelling
12 from the Thames Gateway north to Stansted, was he
13 not?

14 A. Yes, he was. My own view is that there is a very
15 good direct train service right to the heart of
16 the terminal on a frequent high-speed basis.

17 Q. So, you have not been crammed like a sardine into
18 a carriage like the rest of us?

19 A. That has not been my experience, no, and I use
20 the train regularly.

21 Q. We will come back to all that in the autumn. Can
22 I turn on then please to some other matters, away
23 from employment? You touch upon the various
24 other heads, as it were, Mr Rhodes, that are
25 covered by other witnesses in more detail in your

1 proof. I quite understand why you do that. I am
2 going to leave most of the questions that I have
3 on those matters to the individual witnesses.

4 But I have just one or two questions, really,
5 topic by topic, and none at all on some of the
6 topics.

7 Noise, first of all, you cover on page 41 of
8 your proof. Well, not just on page 41 of your
9 proof, but in a section beginning on page 38, and
10 I wanted to ask you one matter arising from
11 page 41. I presume that I am right that these
12 questions are largely for Mr Charles.

13 A. That depends what they are, of course.

14 Q. Yes. The issue of what has already been
15 considered, and you refer us back to the White
16 Paper and SERAS work, it is right, is it not,
17 that work did not look beyond the 57 dB Leq
18 contours? That was what that work was focussed
19 upon, in noise terms?

20 A. If you do not mind, I do not want to give you a
21 categorical answer. Mr Charles will know better
22 than I do. It is certainly principally focused
23 on the 57 dB Leq contour; it also gave some
24 consideration to nighttime noise. But, beyond
25 that, I am not sure.

1 Q. Well, we will pick those points up with
2 Mr Charles. 9.25, and this again maybe is caught
3 by the same sort of reply you have just provided
4 to me. The last sentence of 9.25, in your
5 judgement:

6 "It is entirely understandable that the
7 government should have been influenced by the
8 relatively low numbers of people affected by
9 aircraft noise at Stansted."

10 That is a sentence that depends upon
11 consideration of the populations within the 57 dB
12 Leq contour, is it not?

13 A. Not exclusively, no. In fact it is a judgement
14 that can be made without reference to any
15 contour. It is clear, that of the different
16 airports considered for expansion, Stansted has a
17 particularly low employment density in its
18 immediate vicinity.

19 Q. In its immediate vicinity, there is no
20 quantitative assessment of those affected more
21 broadly by noise from Stansted, is there? There
22 is no attempt to look beyond the 57 dB Leq
23 contour.

24 A. There is, yes. Mr Charles has looked at, and
25 produces evidence about, wider impacts.

1 MR HUMPHRIES: Sir could I just raise a point there?
2 In answering the question Mr Rhodes referred to
3 Stansted having a particularly low employment
4 density.
5 MR BOYLAND: I took it to mean residential.
6 MR HUMPHRIES: Sir, I believe that to be the case, but
7 I just wanted to --
8 MR BOYLAND: Thank you.
9 MR HILL: We are talking about the White Paper here,
10 are we not, Mr Rhodes?
11 A. Yes.
12 Q. We are talking about what the White Paper did.
13 The White Paper looked at and compared 57 dB Leq
14 contours for a variety of different options, did
15 it not? That is what the exercise was about.
16 That is where the quantitative work is done.
17 A. That is where the quantitative work is done.
18 Q. Yes.
19 A. It is, however, a self-evident point, and one
20 that Mr Charles addresses, that the population
21 density around Stansted, contour or no contour,
22 is relatively low compared to other airports.
23 Q. Well, we are going to come back to that with
24 Mr Charles, obviously, and you will be aware that
25 parishes, districts, counties well beyond the

1 immediate vicinity of Stansted have objected to
2 this application.

3 A. I am aware of that, yes.

4 Q. Very well, we will come back to those points with
5 Mr Charles.

6 Turning on from noise, just one or two points
7 on the quality of life issues. It is not
8 disputed, is it, that this was raised with BAA at
9 the earliest possible stage in the scoping
10 opinion?

11 A. That is correct, and BAA responded at that stage,
12 setting out a position, which has not changed.

13 Q. Yes. That was the request to look at quality of
14 life issues, either in accordance with the EA,
15 EN, EH Countryside Agency methodology, or a
16 similar methodology.

17 Now, was it your advice that no attempt was
18 made to address these issues?

19 A. Not originally, no, it was a decision that was
20 made by the, as far as I know, made by the STAL
21 Team, perhaps on advice, I do not know, but the
22 same team that coordinated the previous
23 environmental assessment was responsible for
24 instructing and coordinating this environmental
25 assessment.

1 Q. Sorry, just let me understand that. The same
2 personalities --

3 A. Well, the planning team at STAL commissioned both
4 environmental assessments, in other words, for
5 the 2001 application and for the 2006
6 application. As far as I can help you, it was
7 that team, which took the decision not to provide
8 a quality of life assessment with the
9 application.

10 Q. Very well. So far as the quality of life impacts
11 are concerned, you cite the RES, Regional
12 Economic Strategy, in support of your argument.
13 Can I just ask you to turn to CD119. It should
14 be on my list. Do you have that? We have not
15 referred to it so far, so it might be tucked away
16 in the documents.

17 You refer to it in your proof on page 24,
18 paragraph 6.8; you might be able to pick up the
19 reference there as well if you cannot immediately
20 put your hand on the Regional Economic Strategy.

21 You have that reference to goal 6, and one
22 sees there, probably easier to take the quote
23 from page 24 of the proof, paragraph 6.8:

24 "[The] support [provided for] the sustainable
25 expansion of airports including proposals

1 progressed as a consequence of the Aviation White
2 Paper, while seeking to minimise the negative
3 environmental and quality of life impacts of
4 airport expansions."

5 So it is there referring independently to
6 negative environmental and negative quality of
7 life impacts of airport expansions.

8 What do you think the RES has in mind,
9 Mr Rhodes, in that passage that you cite in your
10 proof in referring to negative quality of life
11 impacts?

12 A. I do not know. The most obvious things that
13 might affect quality of life in relation to
14 aviation could be noise, could be congestion,
15 could be -- I do not know, I am speculating --
16 pressure on the housing market, I do not know.

17 Q. Well, you have not sought any further clarity on
18 that point from the authors of the RES?

19 A. Not thought it necessary to do so, no.

20 Q. They plainly think it is a relevant matter, do
21 they not, to consider?

22 A. Well, it has that reference in their economic
23 strategy. They certainly do not suggest that
24 quality of life assessment must accompany
25 significant planning applications in the region.

1 Q. No, but they are concerned, when dealing with
2 airport expansions, to ensure that the negative
3 quality of life impacts are minimised.

4 A. Yes.

5 Q. Now, you, on this issue, referred, at some little
6 length last Friday to the community fund, which
7 of course you refer to in your proof as well.
8 You have put in a little extract, which I think
9 is now CD385, which some of us will have with a
10 rather poorly reproduced plan on the front of it.
11 The legal foundation for the community fund may
12 not have been on my list, in which case I accept
13 blame. It is not essential for you to have it,
14 but you might want to have it. I am sorry about
15 that.

16 MR BOYLAND: We were given this morning a better copy.
17 We are just retrieving that.

18 A. I think it is 383.

19 MR HILL: 383, yes, you are right. Mr Rhodes, the
20 legal foundation for this community fund is, as I
21 understand it, the section 106 agreement attached
22 to the 2003 planning permission?

23 A. Yes, it is.

24 Q. It was established by BAA, I presume, in order to
25 address certain impacts and issues arising from

1 the 2003 planning permission?

2 A. Yes.

3 Q. Which impacts and issues do you understand it
4 seeks to address?

5 A. My understanding is it seeks to address what I
6 might call generalised impacts. I think those
7 are the words in the 2002 committee report.

8 Another way of putting that might be those
9 impacts which cannot be easily identified or
10 defined but which may exist within the local
11 community.

12 Q. Those were impacts which arose via the increase
13 in throughput from 15 MPPA to 25 MPPA?

14 A. Which may have arisen, yes.

15 Q. As you told us, the fund has approximately
16 £100,000 per annum to spend over the area
17 described by the line on the front page, which I
18 am instructed captures about 200,000 people,
19 includes the whole of Harlow, Bishop's Stortford,
20 Saffron Walden and Great Dunmow to the east.

21 Does that sound about right to you?

22 A. Probably, yes.

23 Q. So, within that area, there is about 50p per head
24 to spend per year?

25 A. Yes.

1 Q. As we have just agreed, that was established in
2 connection with the proposal for the increase
3 throughput from 15 to 25 MPPA. As I understand
4 the position, there is no proposal to increase
5 the size of that fund in association with the
6 proposal before these inspectors for a 35 MPPA
7 airport?

8 A. At present that is the case. The mitigation
9 package that was provided in November last year
10 suggested rolling the fund forward.

11 Q. But not increasing the fund?

12 A. But not increasing the fund, and as at today I
13 have heard of no request from the District
14 Council that the fund should be increased and no
15 suggestion that the fund is currently inadequate.
16 My understanding is that the fund operates very
17 successfully and helps a number of useful causes
18 in the local area.

19 Q. That is as may be, but we are concerned here with
20 a proposal for an extra 10 million passengers per
21 annum, an extra 170 movements per day, and the
22 BAA position is that there is no need to increase
23 the provision made in the community fund over and
24 above that which was made for a 25 MPPA airport.

25 A. That is correct. As I have said, we still have

1 not heard what the council thinks.

2 Q. You keep saying that, Mr Rhodes, but you ...

3 A. Well, it is true.

4 Q. Your position is that there is no need to do
5 this? That is the BAA stated position?

6 A. Yes. The previous fund arose from proper
7 discussion and consultation with the council in a
8 manner which the District Council has been
9 unwilling or unable to enter into in relation to
10 this application.

11 Q. I do not think that is fair. You know as well as
12 I do that the 25 MPPA planning permission was
13 granted after a period of some two years.

14 A. Yes, but it provides a clear framework to control
15 the operation of the airport and the obvious
16 thing to do is to roll forward existing
17 obligations and to consider whether each of them
18 remains appropriate. That is an exercise which
19 BAA has wanted to discuss with the council for
20 some time.

21 Q. At no stage has it made any proposal to the
22 council that the community fund should be
23 increased from the size that it is presently
24 fixed at?

25 A. Correct.

1 Q. Thank you. Now, a report to committee of
2 29th November 2006, have you got that to hand,
3 CD34? In the context of some of the comments you
4 make in section 10 of your proof, I just wanted
5 to take you to paragraph 2.13 of the committee
6 report so that we can be sure we understand the
7 position in the same way so far as the quality of
8 life issues are concerned. Paragraph 2.13,
9 page 60 going over to 61, there is an implication
10 in your proof, Mr Rhodes, that in considering
11 these matters the council only really had regard
12 to the representations of SSE and its erosion of
13 the community documentation. Just turn to
14 paragraph 2.13 on page 60 going over to 61 and
15 look at the last sentence. It is plain, is it
16 not, from that last sentence, which is on
17 page 61, that the matters there being relied upon
18 were supported by the SSE documentation, the
19 experience of local ward members and also
20 complaints to the Planning Enforcement Service?
21 It is a mixture and combination of those three
22 inputs that led to the council taking the view
23 that it did on this matter?
24 A. Yes, certainly at the committee meeting which I
25 attended, the erosion of the community report and

1 speakers who spoke to the committee about it was
2 a significant feature. And certainly my view was
3 and remains that the council has produced
4 virtually no evidence to demonstrate the harm
5 which it is suggesting exists. We got for the
6 first time from Mr Mitchell a list of a very few
7 things which he could identify as being relevant
8 to this objection with no evidence to back them
9 up, no quantification, and that remains the
10 position.

11 Q. Well, that is not a fair reflection of
12 Mr Mitchell's evidence, as you very well know.
13 There was quantification and Mr Mitchell gave
14 full evidence on that matter. It is a matter of
15 record, it is a matter of submission, and I have
16 no intention whatsoever of reading out what he
17 said to the inquiry again in cross-examination of
18 you, Mr Rhodes.

19 A. The inspectors will take their view, but I have
20 tried to define what the harm is and I ...

21 Q. You said that.

22 A. I have explained and it was identified by
23 Mr Mitchell as relating to some properties in
24 multiple occupation, some unauthorised bed and
25 breakfast use and some local car parking in

1 streets and some comings and goings at antisocial
2 hours, anecdotal evidence for which there is no
3 support and not the type of harm which I think
4 begins to approach justifying refusal of this
5 proposal. One of the things which ...

6 Q. Are you going to finish, Mr Rhodes?

7 A. ... I said in my evidence at paragraph 10.23 of
8 my evidence is that when this matter was
9 addressed in the September committee report ...

10 Q. Yes, we have had this.

11 A. ... and in particular the changes in the local
12 housing market which are actually the basis of
13 the reason for refusal, the officers at that time
14 suggested that the impacts were due to the HOSS
15 and HVGS schemes and that there was no report of
16 such changes in the housing market in Thaxted,
17 Great Hallingbury, Little Hallingbury or Burton
18 End. Those are the officers' views. We find,
19 when we come to the November committee report,
20 exactly the same paragraph but without that
21 sentence, which again I find significant. I have
22 searched in vain for hard evidence to back up
23 this reason for refusal, which could be then
24 addressed by reference to either an analysis of
25 that evidence or by a mitigation proposal, but it

1 does not exist.

2 Q. You said all that in chief; you have just
3 repeated yourself, Mr Rhodes, and, indeed, the
4 point you have just referred to was put to
5 Mr Harborough on the last day of the inquiry.
6 There is no need to repeat things ad infinitum.
7 You have said that you have not been able to find
8 evidence of this. Mr Mitchell has given his
9 evidence at the inquiry. I have no intention of
10 repeating it all to you because that is not going
11 to help the inspectors.

12 Can I understand this from you. Why was an
13 investigation into impacts on rural character of
14 an additional 10 million passengers per annum
15 regarded as appropriate and submitted as part of
16 the environmental statement in 2001 but then
17 rejected out of hand in 2006?

18 A. As you know, I was not involved in 2001 so I
19 cannot properly address the first part of your
20 question, but it may have been because quality of
21 life assessment was then a new phenomenon which
22 had some currency at the time. What we have seen
23 now is that even the authors of the quality of
24 life assessment approach accept that as an
25 approach it is redundant.

1 Q. Have you looked at CD29 or the part of CD29 that
2 contains the assessment of impacts on rural
3 character?

4 A. I have -- I certainly have in the past, yes.

5 Q. It was on my list, CD29, volume 13. (Pause)

6 MR BOYLAND: Have we finished with CD34? That is the
7 committee report.

8 MR HILL: The committee report I think one always has
9 to keep fairly close to hand.

10 MR BOYLAND: Yes. It is such an unwieldy document, is
11 it not?

12 MR HILL: I am sorry, sir, yes.

13 MR BOYLAND: Addendum to the environmental statement.

14 MR HILL: I have CD29 as something different. It has
15 probably suffered the same renumbering fate as
16 the committee report. I think it must be CD28.
17 CD28 is all the volumes in the original
18 environmental statement I am asking about,
19 volume 13, which is the rural character volume.
20 You have seen this before, Mr Rhodes, I know.

21 A. Yes, I have.

22 Q. This is the document submitted with the last
23 planning application running to some 55 pages and
24 examining a whole series of matters relevant to
25 rural character, including employment and

1 settlements, housing, population, trends in
2 employment and settlement pattern and provision
3 of local facilities. None of this information is
4 available, is it, in the context of the 2006
5 environmental statement?

6 A. Not in this form, no, but neither does it address
7 the issues raised in the reason for refusal. I
8 do not think it would be appropriate to regard
9 this as an answer to the council's position,
10 which is concerned about the pressure on the
11 nature and character of residential accommodation
12 arising from the presence of a rapidly growing
13 airport. That was not the function of the rural
14 character chart.

15 Q. This dealt with a whole series of matters and
16 looked at the provision of facilities and housing
17 in rural communities.

18 A. It looked at a whole range of factors, none of
19 which are, as I understand it, in contention
20 between us.

21 Q. Well, you say that; I do not think that is
22 accepted. That certainly was not the position as
23 I understood it from Mr Mitchell, but there is
24 nothing like this, there is no development of it,
25 there is no attempt to grapple with any of these

1 issues in a similar way or an extended way in the
2 material before the inquiry about the 35 MPPA
3 application.

4 A. There is nothing like this. A number of the
5 issues are addressed elsewhere and, as
6 Mr Mitchell accepts, the application is complete
7 through its supporting documents and
8 environmental statement. In that respect, the
9 absence of a quality of life assessment does
10 nothing more than confirm that this application
11 is comparable to other major applications around
12 the country. It would be unusual, as we have
13 heard from the evidence, in the extreme if it was
14 accompanied by a quality of life assessment.

15 Q. Just so we can see your perspective on this
16 issue, Mr Rhodes, have you lived most of your
17 life within a rural or an urban community?

18 A. Rural.

19 Q. Yes. I am surprised you find it so hard to grasp
20 the importance of these issues to ...

21 A. I do not grasp -- I do not find any difficulty at
22 all in grasping the issues. What I have tried to
23 do is assess this from a land use planning
24 perspective to understand what the objections are
25 and how they might be addressed. My local

1 community has suffered the loss of its local
2 shop. I do not have an airport to blame for that
3 but I recognise that there are changes happening
4 in rural communities up and down the country. If
5 the council does suggest that there are some
6 changes which are adverse which are only caused
7 by the presence of the airport, it must first
8 identify the evidence in relation to that and,
9 second, suggest what mitigation may be
10 appropriate, because it has not and probably
11 cannot. As I said in evidence-in-chief, the
12 community fund is a very good response to ways in
13 which, if there are these impacts on the
14 community, they might be addressed or
15 compensated.

16 Q. Yes, and you have told us you do not propose to
17 make any change whatsoever to the community fund
18 in connection with this application.

19 A. Propose to extend the community fund.

20 Q. Whilst we are on this issue of impact on the
21 rural communities surrounding the airport, can
22 you help me with why, as you tell us at
23 paragraph 10.18 of your proof, over 20 per cent
24 of BAA's properties are vacant and, by
25 definition, contributing nothing to the

1 community?

2 A. Sorry, what was the question? Can I tell us why?

3 Q. Yes.

4 A. Yes. The principal reason is that a number of
5 them are either recently acquired or for sale,
6 and I would expect that the community would
7 welcome the fact that they are for sale. As the
8 intended line of the second runway has been
9 confirmed by BAA in its January 2007
10 announcement, it is able to define those
11 properties which fell within the original airport
12 boundary set out in the Transport White Paper.
13 Where properties no longer need to be acquired by
14 BAA, they can be sold back into the community.
15 What the evidence has also identified is that
16 those properties which BAA has held long term
17 have virtually no vacancy, one out of 64, and
18 with no difficulty in letting those properties.
19 So the current level of vacancy in the HOSS and
20 HVGS properties simply reflects either their
21 recent acquisition or the intention for them to
22 be sold ...

23 Q. 10.18, we have got 36 vacancies out of 170
24 properties. That is not the same 36 as those for
25 sale, is it?

1 A. Not precisely. There is a correlation set out in
2 my appendix.

3 Q. That is, as I say, over 20 per cent of the
4 properties. In the concluding part of this
5 section where you deal with other considerations,
6 paragraph 10.40 onwards, 10.47 you seek to make
7 the point the airport makes a number of other
8 positive contributions to local communities;
9 simply refer us back to the May 2003 section 106
10 agreement, so we are back to the community fund.
11 This is page 62 of the proof, paragraph 10.47.
12 The employment and training initiatives, the MRF
13 contribution, has that been made?

14 A. It has not been made because the County Council
15 no longer want to have an MRF here. The County
16 Council has not required the money.

17 Q. And the visitor centre, is that something that
18 has been built?

19 A. Not yet been built, although within the timescale
20 envisaged in the 106 I am advised it is likely to
21 be provided during the course of this year.

22 Q. Can we turn then to section 11, the air quality
23 effects, again principally from Mr Pratt. We
24 have also heard on this issue and the issue of
25 Hatfield Forest from Dr Gibson of Natural

1 England. I think it is right that you are not a
2 similarly qualified witness to Dr Gibson, are
3 you?

4 A. I am not, no.

5 Q. So I am not going to go over the matters that he
6 addressed with you. Some of the material he
7 referred to in this section is effectively
8 overtaken by events so far as the recent NOx
9 monitoring is concerned, and I presume I would be
10 best advised to put those matters to Mr Pratt?

11 A. I am not aware that any of it is overtaken by
12 events, but certainly questions about recent
13 monitoring would be put to Mr Pratt, yes.

14 Q. Yes.

15 A. In particular, my evidence relies, rather than
16 absolute levels, on the nature of the increment
17 identified in the environmental assessment for
18 the Generation 1 application and I do not
19 understand that to be in issue.

20 Q. I think it is all now in issue because the
21 concentrations that have been monitored cast
22 great doubt upon the model concentrations,
23 Mr Rhodes. The matter is being reviewed as we
24 speak between Mr Moorcroft and Mr Pratt. So far
25 as the Air Transport White Paper and CD113 are

1 concerned -- that is the consultation report --
2 am I right that neither of those documents
3 contains analysis of any sort of the potential
4 for an enlarged Stansted to impact upon Hatfield
5 Forest through elevated NOx concentrations?
6 A. I can certainly agree with you that I have not
7 seen any such assessment in the SERAS or
8 supporting documents. It is plain that the issue
9 was in the consciousness of those preparing the
10 Air Transport White Paper, however, because it is
11 directly referred to in the White Paper.
12 Q. Yes. You refer in your rebuttal proof, BAA1D,
13 paragraph 2.29, to what you call the government's
14 policy position on this matter. It is page 10.
15 Perhaps we should look at page 9 first and
16 paragraph 2.28. This is from the ATWP at
17 paragraph 11.34:
18 "The NOx concentration limit for the
19 protection of vegetation is not considered to be
20 applicable around a developed Stansted."
21 Clear reference to a concern which had been
22 expressed by consultees about air quality in
23 relation to Hatfield Forest and which is
24 emphasised, for instance, in UDC1 at
25 paragraph 6.18:

1 "The ATWP clearly sets out the government's
2 policy position."

3 The purpose of providing such a clear and
4 specific statement of the government's position
5 must be to avoid the need, you say, for lengthy
6 debate on the point. Then the District Council's
7 evidence is criticised for not referring to that.
8 There is no discussion of this matter at all in
9 the ATWP or CD113 as you have just told us. What
10 is unclear is why the government has not taken
11 the approach that your advisors took in volume 10
12 of the environmental statement. Can we just go
13 back to that, please? That was on my list; it is
14 the Nature Conservation volume and it is page 57
15 of volume 10, paragraph 10.44, which acknowledges
16 that whatever the position on this exclusion
17 area, the concentration is still relevant to the
18 assessment of possible ecological effects. That
19 really follows as a matter of logic. Are you
20 able to explain why the government seems to have
21 overlooked the actual risks to Hatfield Forest
22 quite independently of how one views the Air
23 Quality Regulations?
24 A. Well, like you, I can only speculate. We do know
25 as a matter of government policy that Hatfield

1 Forest lies within the exclusion zone, exclusion
2 zone which is consistently applied by the UK
3 government within which the government does not
4 apply the air quality limits. It seems to be
5 entirely consistent, therefore, for the
6 government to say what it has said in the Air
7 Transport White Paper on precisely the same
8 subject.

9 Q. Yes, but your ecological consultants are saying,
10 "Notwithstanding that exclusion, that may have
11 some implications for the application of the Air
12 Quality Regulations but the concentration is
13 still relevant to the assessment of possible
14 ecological effects on this extremely important
15 resource." I do not know; you have, I am sure,
16 had many discussions with the Department for
17 Transport in the past, Mr Rhodes. Have you ever
18 asked why they have not taken the same approach
19 to this important issue as your ecological
20 advisors?

21 A. No, I have not asked them that question, but I
22 would have expected the response to relate to the
23 policy of the government which is applied, as you
24 know, across conurbations and within distances of
25 motorways, the policy approach in relation to

1 impact.

2 Q. But the policy approach will not help Hatfield
3 Forest, will it, as a matter of fact on the
4 ground if it is subjected to concentrations in
5 excess of 30µg/m³?

6 A. What we all know is that across the country there
7 are large areas where the limit values are
8 exceeded and where the UK government would not be
9 able to meet objectives if those objectives
10 applied to those areas and the government has, as
11 a matter of policy, identified exclusion zones
12 for that purpose. So government policy is quite
13 clear. The environmental statement, of course,
14 quite rightly looks at environmental effects.
15 There is then a policy judgement to be made about
16 those effects.

17 Q. So it is right to record, is it not, that the
18 ATWP has effectively excluded from its
19 considerations any actual ecological impacts on
20 Hatfield Forest? That is right, is it not? That
21 is the consequence of what you have just told me?

22 A. I do not know anywhere -- sorry, to try and be as
23 helpful as I can, anywhere where a detailed
24 assessment of the ecological effects of expanding
25 Stansted on Hatfield Forest was undertaken as

1 part of the Air Transport White Paper or its
2 background papers. I do know that the government
3 applies as a matter of policy exclusion limits to
4 areas such as Hatfield Forest which are within
5 the specified distances, for instance, of
6 motorways. So, as a policy approach, the
7 government's position is entirely consistent.

8 Q. Well, we are trying to move beyond the policy
9 approach, as your own advisors have done in
10 volume 10 of the environmental statement.

11 A. I understand.

12 Q. If I have recorded your answer correctly, you do
13 not know of any detailed assessment of the
14 ecological impacts on Hatfield Forest of the
15 expansion of Stansted which preceded the White
16 Paper policies?

17 A. I do not, no. Sorry, just to be completely
18 clear, not undertaken by the government. Of
19 course, the issue was addressed previously in the
20 2001 planning application and has been addressed
21 as a result of the 106 obligations of that 2003
22 consent.

23 Q. I have a clear note of your answer, Mr Rhodes,
24 thank you.

25 Now, surface access I am going to leave

1 entirely. You deal with it very briefly and we
2 are going to come back to that on another day.

3 I think the lines are set fairly clearly on
4 the climate change issue so far as UDC and BAA
5 are concerned. It might be sensible just to take
6 out -- this is the last point -- the Air
7 Transport White Paper progress report and look,
8 please, at paragraph 1.6, CD88. The third bullet
9 point, we have been here before. That is where
10 the government tell us:

11 "We propose to consult on the development of a
12 new emissions cost assessment to inform
13 Ministers' decisions on major increases in
14 aviation and capacity."

15 It is right, is it not, that there is nothing
16 in that formulation which expressly precludes the
17 application of ECA to development control
18 decisions, is there?

19 A. There is nothing in those words which says that
20 it cannot be applied, but a proper reading of the
21 document as a whole, I think, readily comes to
22 that conclusion.

23 Q. Well, as you know, Mr Harborough disagrees with
24 you on that and the inspectors have our
25 respective positions. Again, I know that ...

1 A. I did not understand that Mr Harborough did
2 disagree with that. Mr Harborough accepted that
3 it was a matter of fiscal rather than planning
4 policy.

5 Q. Again, we have our notes of the evidence and I am
6 sure they will be relied upon.

7 As I indicated a moment ago, I know BAA is not
8 shy of raising matters with the government when
9 it wants to do so. Have you sought to find out
10 what the ECA consultation is going to contain?

11 A. I do not know what it is going to contain, no.

12 Q. Have you asked?

13 A. No.

14 MR HILL: Thank you very much, indeed, Mr Rhodes.

15 Thank you, sir.

16 MR BOYLAND: Thank you, Mr Hill. We would normally
17 now move on to Mr Stinchcombe to cross-examine.

18 I gather you have indicated to the programme
19 officer that if you got on this afternoon you
20 would be likely to finish by the end of tomorrow,
21 Mr Stinchcombe?

22 MR STINCHCOMBE: I would very much hope to, sir.

23 MR BOYLAND: Certainly. I think your estimate at one
24 stage was up to two days, but hopefully that will
25 reduce in the light of cross-examination by

1 Mr Hill.

2 MR STINCHCOMBE: Indeed, I would endeavour not to ask
3 any of the same questions that Mr Hill asked and,
4 indeed, to take the attention of Mr Rhodes to
5 some additional and different documents rather
6 than the ones that have already been covered.

7 MR BOYLAND: Yes, I certainly urge you to do that. I
8 gather there is some problem with Mr Holgate's
9 availability for the ACC. He was originally, I
10 believe, scheduled to come tomorrow. The last I
11 heard was that it was possible that he could move
12 that until Thursday, which would be okay.

13 Mr Smith for the National Trust, how are you
14 fixed time-wise?

15 MR SMITH: Sir, we expected to be here for this week
16 and have arranged commitments around that. One
17 begins now to begin to look to next week, and I
18 have not dared go there.

19 MR BOYLAND: Certainly your cross-examination of
20 Mr Rhodes would be this week. I do not think
21 there is any doubt about that.

22 MR SMITH: There is some small comfort there, then.

23 MR BOYLAND: If not necessarily to him. So, as far as
24 your cross-examination of Mr Rhodes is concerned,
25 it is not going to be a major problem for you if

1 that is on Thursday rather than tomorrow?

2 MR SMITH: No.

3 MR BOYLAND: Thank you. In that case, we will proceed

4 with Mr Stinchcombe. I think rather than

5 breaking that in the middle, we will take a break

6 now. We will adjourn until 3.20 pm.

7 (3.05 pm)

8 (A short adjournment)

9 (3.24 pm)

10 MR BOYLAND: Thank you, ladies and gentlemen. The

11 inquiry is resumed. Mr Stinchcombe?

12 Cross-examination by MR STINCHCOMBE

13 MR STINCHCOMBE: Thank you very much, sir, and good

14 afternoon, Mr Rhodes.

15 MR RHODES: Good afternoon.

16 Q. Mr Rhodes, it may help you and, indeed, the

17 inspectors and the public if I outline to you the

18 issues which I intend to cover and the order in

19 which I intend to cover them so you know where we

20 are going. I make clear to you at the outset

21 that I will endeavour not to ask the same

22 questions as Mr Hill, although we may need to

23 acknowledge some of the questions and answers

24 that you have given, and I will not ask you

25 technical questions either in respect of those

1 matters such as noise and the like upon which
2 there have been and will be other witnesses to
3 cross-examine, although I may ask you some
4 questions in respect of a planning context for
5 those matters.

6 The issues which I am going to cover with you,
7 there are going to be 11 sections to the
8 cross-examination, so you will be able to gauge
9 roughly how far we have got through by each
10 turning point. I will ask you a few questions at
11 the outset about your instructions and those
12 early matters; then about the proper approach to
13 take to this application in the light of statute;
14 then about the development plan, what the
15 policies constitute. We will come on thereafter
16 to the EIA Regulations and how they advise we
17 should approach the assessment of environmental
18 impacts. The fifth section will concern certain
19 matters to do with forecasting, hopefully within
20 your remit but, of course, if they do need to go
21 to a different witness we can do that, but the
22 purpose will be to identify the base line and the
23 35 MPPA input. Then on to noise, then quality of
24 life, then air quality and then climate change,
25 so dealing with all of the environmental impacts.

1 Then the last two sections will deal with the
2 other side of the balance, the White Paper and
3 economic evidence.

4 Can I start by reference to your instructions
5 and involvement in this appeal. You tell us in
6 paragraph 1.1 of your proof that you are the
7 Senior Director of RPS Group and in paragraph 1.2
8 that you ...

9 A. I am sorry, a senior director.

10 Q. A senior director, and in paragraph 1.2 that you
11 are the Operational Director of the RPS office in
12 London?

13 A. Yes.

14 Q. Are you also or have you ever been Chairman of
15 RPS Transport and Environment Division?

16 A. Yes, I was up until about two years ago.

17 Q. I am obliged. You tell us in paragraph 1.3 of
18 your proof that you were first instructed by BAA
19 and Stansted Airport Limited in respect of
20 Stansted in 2004?

21 A. Yes.

22 Q. Can you tell us when in 2004?

23 A. Not precisely. I think it was the early summer
24 probably. I can check if it is important.

25 May/June possibly.

1 Q. May or June? We will come on to that if we need
2 to in a short while.

3 Since then, either you individually or RPS as
4 a consultancy have undertaken a considerable
5 amount of work in respect of Stansted and on
6 behalf of BAA?

7 A. Yes.

8 Q. You tell us in paragraph 1.3 -- and this was a
9 matter that was covered by Mr Hill -- that you
10 appeared on the company's behalf at the
11 examination in public of RSS14 last year?

12 A. Yes.

13 Q. As I understand it, RPS also carried out the
14 original sustainability appraisal in respect of
15 this proposal, CD21.1?

16 A. Yes. RPS have had three instructions in relation
17 to Stansted: one general planning, the second the
18 sustainability appraisal, and thirdly the
19 environmental assessment of the surface access
20 proposals for the second runway.

21 Q. I am obliged. So far as the sustainability
22 appraisal is concerned, were you personally
23 closely associated in that?

24 A. No.

25 Q. Were people for whom you took responsibility

1 associated with that?

2 A. Sorry, I do not want to avoid your question. It
3 was undertaken by colleagues in the Oxford office
4 of RPS, so not within the office that I am
5 responsible for. Their instruction at the
6 beginning may have overlapped with the time at
7 which I was Chairman of the division, so
8 responsible in that sense possibly.

9 Q. But not day-to-day involvement?

10 A. No.

11 Q. We can turn this up if we need to, but you may be
12 able to agree it without me turning it up. I
13 think it is right, is it not, that in that
14 sustainability appraisal RPS draw certain
15 distinctions between those kinds of appraisals
16 and environmental impact assessments?

17 A. Yes.

18 Q. They do. You tell us, I think, in particular
19 that sustainability appraisals are objective-led
20 appraising the proposed development against
21 relevant objectives, whereas EIAs, the approach
22 then is to identify any significant environmental
23 impacts of any proposed development?

24 A. That sounds right, yes.

25 Q. Yet, although there is a distinction, clearly

1 there is a close relationship between the two?

2 A. There certainly is a relationship, yes.

3 Q. One is seeking to appraise the sustainability of

4 a proposal and the other to assess its

5 environmental impacts?

6 A. Yes.

7 Q. And many considerations will be relevant to both?

8 A. Yes.

9 Q. I take it that you agree that it is absolutely

10 imperative in respect of both that they should

11 present an objective assessment of the

12 environmental effects that a project may cause?

13 A. I do.

14 Q. Of course. Indeed, you may have seen in the list

15 of documents that I produced for you a planning

16 article -- I think it is CD385 -- from Planning

17 magazine. Do you have that document, Mr Rhodes?

18 A. I saw it this morning, yes. I have it, thank

19 you.

20 Q. I presume you have seen it some time before this

21 morning as well, albeit maybe a little while ago,

22 because you feature in this, do you not?

23 A. Well, apparently, yes. I do not think I have

24 ever seen it before but ...

25 Q. I see. Indeed, we can see those very words which

1 I put to you about it being imperative that they
2 present an objective assessment in this article,
3 can we not? Perhaps if we just identify where
4 everything falls together from this article.

5 Look at the second column and the first
6 substantive paragraph beginning "RPS".

7 A. Yes.

8 Q. "RPS, along with law firm Berwin Leighton
9 Paisner, contributed to a revised set of EIA
10 guidelines drawn up by the Institute of
11 Environmental Management and Assessment. The
12 document is touted as the first one-stop guide to
13 the practice and legal frameworks for drawing up
14 EIAs. It offers advice on avoiding pitfalls,
15 assessing alternatives, screening mechanisms,
16 scoping, baseline studies, mitigation and review"
17 and then we have a quote from you, yes?

18 A. I see it, yes.

19 Q. "RPS Planning, Transport and Environment
20 Chairman John Rhodes outlined some of the common
21 problems with drawing up EIAs. One frequent
22 failing is to see EIAs as the domain of certain
23 professionals. 'You ask the greenest person you
24 know to write them, but they transcend a large
25 range of disciplines,' he says."

1 And then the second temptation you warn of is
2 this:

3 "Another temptation is to fill them with false
4 claims about positive outcomes of development.
5 Environmental statements should 'present an
6 objective assessment of the environmental effects
7 that a project may cause' the guide stresses.
8 'However [and I think this is your quote again],
9 many statements are used as a basis for promoting
10 the scheme and to minimise the adverse effects of
11 the proposal. When this approach is identified
12 by the reader, the credibility of the
13 environmental statement is undermined'."

14 You would stand by every single word of that,
15 would you not?

16 A. Very strongly, yes.

17 Q. Of course you would. That would be true not just
18 for environmental impact assessments but also for
19 sustainability appraisals?

20 A. It would, yes.

21 Q. And also, of course, for proofs of evidence
22 themselves?

23 A. Absolutely.

24 Q. Of course. It is clear, is it not, that you have
25 seen examples of other professionals falling into

1 that temptation?

2 A. Yes, I have seen some very poor environmental
3 statements in my time. The event that this
4 article refers to was an attempt to launch with
5 Berwin Leighton and the Institute of
6 Environmental Management and Assessment
7 guidelines on best practice for EIA, and I think
8 it is fair to say that RPS was chosen to be party
9 to that because of its reputation for, if I may
10 say, for high quality approach, objective
11 approach to environmental assessment. Certainly
12 I would not expect the Institute to be associated
13 with anybody who had a different reputation.

14 Q. So the inspectors can note, can they not, that we
15 are agreed that when we look at the
16 sustainability appraisals, when we look at the
17 environmental impact assessments, when we look at
18 the proofs of evidence and when we consider the
19 evidence of this inquiry, we have to be astute
20 not to overstate the benefits of this proposal
21 and not to minimise its environmental impacts
22 either?

23 A. Yes, I agree. It should be a proper, objective
24 assessment of the proposal.

25 Q. If those kinds of assessment are going to be

1 properly objective, it is obviously vital that
2 they are undertaken in a completely impartial way
3 without any predisposed view as to what the
4 outcome should be?

5 A. They should be, yes.

6 Q. In particular, it is vital, is it not, that those
7 undertaking those kinds of sustainability
8 appraisals do not do so with a mindset of trying
9 to promote the scheme?

10 A. Yes.

11 Q. Otherwise the credibility of the exercise would
12 be undermined?

13 A. I agree.

14 Q. If we turn to the foot of this article, I think
15 we should be able to identify its date,
16 16th July 2004. That is around about the time
17 that RPS have just been instructed by BAA, is it
18 not?

19 A. I think it probably is, yes.

20 Q. So your firm would have been fully aware of that
21 importance from the outset of its instructions by
22 BAA, fully aware of the importance of being
23 absolutely objective and not predetermining or
24 having a predisposed view as to the outcome of
25 any assessment?

1 A. Yes, and for many years before that, yes.

2 Q. I am obliged. I wonder if you could briefly turn
3 up document SSE17A which is our proof of evidence
4 on the sustainability appraisal. Do you have
5 that?

6 A. Yes.

7 Q. Can you turn to what I think is probably printed
8 out as annex 2 to that proof, the last page,
9 which, although it is a letter from SSE to the
10 Chief Executive of UDC, in my bundle at least it
11 is actually a press release from RPS dated
12 15th July 2004. Have you found that press
13 release?

14 A. I have it, yes, thank you.

15 Q. That is 15th July 2004. That is a day before
16 that article in Planning magazine, is it not?

17 A. It is, yes.

18 Q. Let us just see what this press release says:
19 "RPS to provide planning and policy advice on
20 Stansted development."

21 Just pausing here, you have just been
22 commissioned, we see in paragraph 3, to provide
23 strategic land use planning and policy advice,
24 but that is before any of the sustainability
25 appraisal has been undertaken by RPS?

1 A. I think probably quite significantly before, yes.

2 Q. Indeed, so this is the very beginning of RPS's
3 involvement with these matters and we see in bold
4 and italics halfway down a quote from
5 John Rhodes, Chairman of RPS Planning, Transport
6 and Environment Division. That is you?

7 A. That is me.

8 Q. You tell us:

9 "RPS has a long track record with BAA in
10 particular at Stansted. RPS provided advice upon
11 agricultural matters during the Airports
12 Inquiries 1981 to 1983 and subsequent to the
13 inquiries managed 350 hectares of agricultural
14 land on behalf of BAA prior to disposal of the
15 land to the private sector. We believe our key
16 role on this important commission is to ensure
17 that discussion and decisions are targeted on
18 when and how to deliver the planning consent
19 rather than if. The government has tasked BAA
20 with delivering the second runway at Stansted.
21 RPS will do all in its power to ensure that our
22 client can meet this objective."

23 Yes?

24 A. That is what it says.

25 Q. A day before, you were published in a national

1 planning magazine stating that it was imperative
2 that there was always an objective assessment in
3 these matters and that you should not be
4 promoting a scheme through these kind of
5 appraisals, yes?

6 A. Yes.

7 Q. Before any such appraisal had been undertaken by
8 RPS?

9 A. Correct. What question would you like to ask me?

10 Q. It is right, is it not, that before the
11 sustainability appraisal was undertaken by RPS,
12 RPS had already taken the view that its proper
13 role was not to give an objective assessment but
14 instead to press for a planning consent and do
15 all that you could to secure it?

16 A. Well, I understand why -- I understand why you
17 put this to me. It is interesting because it was
18 the first time I saw this when it appeared in
19 your evidence and we may all have reasons to
20 regret PR departments. I certainly do not recall
21 authorising the release, but this release clearly
22 relates to our planning policy instruction. That
23 is the instruction which I received. I received
24 that instruction after I had appraised myself in
25 some detail about the planning and policy

1 background and I went through an interview
2 process which was -- involved a discussion around
3 those issues. I certainly had satisfied myself
4 that in planning policy terms there was the
5 clearest, most up-to-date government policy
6 support for the proposal and that the relevant
7 question to address was how the development is
8 delivered rather than if, and that remains my
9 view today. This does not relate to how the
10 sustainability appraisal is undertaken, which is
11 by a different office as part of a different
12 instruction.

13 Q. But you have been quoted in both documents and
14 you do not deny the accuracy of either quote?

15 A. Well, I do not deny that that is what the
16 documents say. I cannot recall drafting either
17 quote for the purposes of press release. It is
18 not something I generally do. We have a very
19 active PR department who take that upon
20 themselves, but I have explained my position in
21 relation to this quote.

22 Q. You agree that it is important that consultancies
23 such as yours do not have any predisposed view
24 before it undertakes any kind of sustainability
25 assessment?

1 A. Yes, I do.

2 Q. You agree that it should not be seeking to
3 promote a scheme through those kinds of
4 assessments, either maximising the benefits or
5 minimising the impacts?

6 A. I do, yes.

7 Q. Yet you went on record before any RPS
8 sustainability appraisal in respect of Stansted
9 saying that you were going to do everything in
10 your power to get it through?

11 A. Well, I do not ever recall personally using those
12 words. It is not the sort of thing that I would
13 say, but I accept that is what the press release
14 says and it records my view accurately in
15 relation to the planning policy instruction which
16 I had received at that time.

17 Q. The final question on this matter, you have
18 agreed with me and, indeed, it is your own words
19 in that planning article that where the approach
20 of promoting a scheme is identified, then that
21 clearly undermines the credibility of the
22 statement or the proof of evidence?

23 A. Absolutely and I have believed that throughout my
24 career.

25 Q. Right, that is helpful. That deals with the

1 first of the 11 sections, so we now come on to
2 the proper approach to take in respect of this
3 proposal. I wonder if we can agree in particular
4 a few background matters. I think some of this
5 will have been covered by Mr Hill so if and
6 insofar as we simply remind ourselves of the
7 exchanges and move on, we can do that.

8 You tell us in paragraph 2.2 of your proof
9 that all planning decisions require judgment to
10 be made taking into account all material
11 considerations and against the starting point of
12 policy?

13 A. Yes.

14 Q. You agreed with Mr Hill this morning that that
15 meant development plan policy?

16 A. Yes.

17 Q. I wonder if we can just turn quickly to your
18 conclusion in your proof, paragraph 17.2. There
19 you tell us that it is the White Paper policies
20 that are the starting point for a decision in
21 this case. That is not right, is it? It is the
22 development plan?

23 A. You are right. The statutory approach is to
24 start with the development plan. I have
25 explained my position in relation to the

1 development plan in my proof. When one looks to
2 balance the issues, there is a very substantial
3 material consideration in this case, which is the
4 White Paper.

5 Q. Yes, but we can for the moment note that if and
6 insofar as there is a discrepancy between your
7 paragraph 2.2 and your paragraph 17.2, that the
8 position is this, that it is the development plan
9 policy which forms the starting point?

10 A. Technically that is correct.

11 Q. That is a matter of direct consequence of
12 statute, is it not? That is what Parliament
13 decreed in section 38(6) of the 2004 Act?

14 A. It is, yes.

15 Q. I do not suppose you would need to look up that
16 Act, but I think it has got a core document
17 number 301. In particular, it is a direct result
18 of section 38(6), is it not, that it is a
19 mandatory requirement to decide all planning
20 applications in accordance with the development
21 plan unless material considerations indicate
22 otherwise?

23 A. Yes.

24 Q. That means that if the development plan is
25 breached or if the harms which it is designed to

1 protect are harmed by the proposal, then
2 ordinarily planning permission would be refused
3 unless other material considerations indicated a
4 different decision was appropriate?

5 A. That is right, with the sole qualification of
6 considering the up-to-date nature of the
7 development plan that would be attached to it.

8 Q. Of course. In particular, if there is that harm
9 caused to the development plan or to the material
10 considerations protected by it, then planning
11 permission should be refused unless those other
12 material considerations indicate either that
13 there is a need for the development to go ahead
14 so that the harm would have to be endured in the
15 national interest or local or regional interest,
16 or alternatively that there was so much benefit
17 attributed to the proposal that it outweighed the
18 harm?

19 A. Those sorts of things would certainly be
20 important, yes.

21 Q. In your proof at paragraph 719, you are talking
22 there about weighing a planning balance to see
23 whether there are any material considerations
24 which could outweigh a conflict with the
25 development plan. That is what you refer to?

1 A. Yes.

2 Q. I am obliged.

3 A. You also know in the previous paragraph I reach
4 my own conclusion about the conformity with the
5 development plan.

6 Q. Indeed, we will come on to that in the section of
7 this cross-examination which follows.

8 Pausing there, that approach which you
9 advocate in conformity with section 38(6) of
10 looking at the development plan as a starting
11 point, identifying any harms to it or to the
12 interests protected by it, and then weighing
13 against those harms any evidence of need or
14 benefit, that is the standard planning balance
15 which we have to undertake in respect of
16 virtually all planning proposals, is it not?

17 A. It is. I do not want us to lose sight in this
18 discussion about -- of the up-to-date nature of
19 the policies, but subject to that, yes.

20 Q. Of course. That would be one of the other
21 material considerations which would be weighed in
22 the balance?

23 A. Yes, it would, yes.

24 Q. So we have on the one side of the scales the
25 evidence of harm, whether to planning policies or

1 the material considerations protected by it,
2 residential amenity or the environment, for
3 example; and, on the other, the other material
4 considerations which demonstrate either a need or
5 a benefit?

6 A. Yes.

7 Q. I think you have agreed with Mr Hill this morning
8 that the development plan for these purposes,
9 which is itself defined in section 38(3) of the
10 Act, does include the RSS for the region and does
11 include the development plan documents, which for
12 our purposes are RPG9, the Uttlesford local plan
13 and the Essex structure plan?

14 A. Yes. Did you say, sorry, that it does include
15 the RSS?

16 Q. It includes the RPG, does it not, RPG9 ...

17 A. RPG9.

18 Q. ... because I do not think we have got an
19 approved RSS yet, have we?

20 A. Correct.

21 Q. So under statute it would include the RSS, once
22 we have got one, but at the moment it is the
23 RPG9?

24 A. Yes.

25 MR BOYLAND: To be strictly correct, I think the RPG

1 is the RSS for the time being in any event. It
2 is useful to distinguish between the two for
3 these purposes.

4 MR STINCHCOMBE: Yes. That is helpful. We can note,
5 can we not, then, that nothing else at the moment
6 constitutes or comprises the statutory
7 development plan?

8 A. Yes, we can.

9 Q. As the inspector has just helpfully clarified and
10 we have agreed, it is not yet comprised by the
11 RSS, which is only evolving, the emerging RSS?

12 A. Yes. The emerging RSS does not yet qualify.

13 Q. It also, you have agreed, does not comprise the
14 White Paper on Aviation, does it?

15 A. No.

16 Q. Those matters constitute simply material
17 considerations rather than the statutory
18 development plan?

19 A. They do.

20 Q. They constitute material considerations alongside
21 all of the other material considerations which
22 have to be weighed in the balance, do they not?

23 A. Yes.

24 Q. Including all other statements of national
25 government policy?

1 A. Yes.

2 Q. I think you will agree with me that so far as
3 section 39, the next section of the 2004 Act, is
4 concerned, that tells us two things: firstly,
5 that there is a statutory objective of seeking to
6 achieve sustainable development, that is right,
7 is it not, 39(2)?

8 A. Yes.

9 Q. And that, secondly, for the purposes of achieving
10 that statutory objective of sustainable
11 development, decision makers have to have regard
12 in particular to national policies contained in
13 guidance by the Secretary of State?

14 A. Yes.

15 Q. So if those policies are on sustainability or
16 related issues, they clearly have very powerful
17 weight indeed, do they not?

18 A. I do not particularly want to get into adjectives
19 at this stage. I think we have agreed that other
20 statements of government policy are material
21 considerations.

22 Q. If the statutory objective of our planning system
23 is to achieve sustainable development, then
24 national policies and government statements on
25 sustainability will clearly have significant

1 weight, will they not?

2 A. Yes.

3 Q. Because they are designed in terms to achieve
4 that objective?

5 A. Yes.

6 Q. That is very helpful. It is also right, is it
7 not, as a matter of principle that when we
8 consider national policy we have to read earlier
9 statements of national policy in the light of
10 later statements of national policy?

11 A. Yes.

12 Q. Indeed, that is your very point in respect of the
13 development plan and the local plan that you have
14 been at pains to put caveats in your answers,
15 that an earlier statement may be rendered out of
16 date by a later statement?

17 A. It is possible. In the case of national policy,
18 one would expect national policy to be national
19 policy until the point it is withdrawn.

20 Q. Indeed, which is why if it is not withdrawn the
21 way you gauge the totality of policy, reading it
22 coherently and consistently and in an up-to-date
23 fashion, is to read earlier statements in the
24 light of later statements?

25 A. That may be one of the things that you do, yes.

1 Q. Well, you say it may be one of the things you do.
2 If you did it any other way, you would never be
3 able to apply government policy as a whole and in
4 its most up-to-date form, could you?

5 A. Well, I certainly accept it is important to apply
6 policy as a whole and to ensure that one is doing
7 so in an up-to-date way.

8 Q. Let us see if we can just agree a little bit in
9 respect of the status of the Aviation White Paper
10 and its legal effect, and then we will leave it
11 as I indicated at the outset to come back to at
12 the end of the cross-examination on its
13 substance, but just see if we can agree a few
14 matters of principle. It is stated in the
15 statement of common ground between the two
16 principal parties that it has significant weight?

17 A. Yes.

18 Q. Yet it is right, is it not, that by its own words
19 in paragraph 1.4 it is quite clear that it cannot
20 authorise any development?

21 A. Correct.

22 Q. And its proper role in decision making was
23 expressly stated, was it not, to the High Court
24 on behalf of the Secretary of State in the
25 judicial review challenge? I do not know whether

1 you want to look up the references to the
2 paragraphs of Mr Sullivan's -- would that be
3 helpful for you just to see what those paragraphs
4 are?

5 A. Fine.

6 Q. It is CD342, starting with paragraph 56. I think
7 this is a document that Mr Hill did not take you
8 to so I will take you for just a short while on
9 it but, like Mr Hill, will be leaving legal
10 submissions for later and not trespassing into
11 those areas with you, if I can avoid it.

12 Paragraph 56 we see that there has been a
13 witness statement produced to court by Mr Ash,
14 the Deputy Director and Chief Planner in the
15 directorate in the ODPM, on the role of
16 government policy statements in the new statutory
17 framework and we can see what he says in that
18 witness statement:

19 "It is important to recognise that statements
20 of policy, whether at national or regional
21 levels, cannot pre-empt a decision on an
22 application for planning permission."

23 I think your counsel has described that as a
24 statement of the blindingly obvious and you would
25 agree?

1 A. I would.

2 Q. "The purpose of the government's reforms to the
3 system has been to provide a clear policy
4 framework. Every future decision maker's
5 consideration of matters raised by the White
6 Paper will, of course, have to be on a basis
7 which is compatible with that framework. The
8 government's view is that, where need is
9 established by a national policy statement, a
10 planning inspector at a planning inquiry should
11 not have to consider whether a need for the
12 development exists but should consider whether
13 the need identified is outweighed by other
14 relevant factors."

15 It goes on to say: "The establishment of need
16 for a type of development in a policy statement
17 does not mean that an inspector, and ultimately
18 the decision maker, will be precluded by
19 considering the need for the proposed
20 development, albeit that would have to be done in
21 the context of what has been said in the policy
22 statement."

23 So, quite clear there that there is no
24 preclusion of considering the need of a
25 development.

1 A. No, but I think we need to be careful because I
2 suspect that you and I draw different inferences
3 from what the words say. As we have just
4 discussed, the decision in this case and every
5 case is made on a balance of considerations
6 against the background of policy. So, of course,
7 it is necessary on the one side to consider the
8 need for the development and then to consider
9 whether effects that are identified outweigh that
10 need. That is entirely different from saying
11 "reconsider the need" which, as I -- sorry, you
12 will put to me what your position is.

13 Q. You have made that point and we will come back to
14 that perhaps at the end of the cross-examination
15 when we look at the substance of the White Paper.

16 But, just pausing here, the difference between
17 the parties at this juncture, looking at that
18 paragraph, is whether that statement on behalf of
19 the Secretary of State says nothing precludes
20 consideration of the issue of need, whether that
21 actually prevents you from reconsidering the
22 issue of need.

23 A. Yes.

24 Q. We will come on to that in due course. I wonder
25 if we can then turn on to another passage in the

1 judgment just so that we can identify it.
2 Paragraphs 223 and 224, maybe on page 76 if you
3 have the same script as me.

4 You see in paragraph 223 that Mr Drabble -- he
5 was counsel on behalf of the Secretary of State
6 -- emphasised the fact that the White Paper did
7 not authorise any particular development, merely
8 informed and guided the consideration of specific
9 planning applications. Here he is talking in
10 respect of the possibility of the wide-space
11 runway at Stansted:

12 "It was inevitable that any application would
13 have to be accompanied by an EIA. An ES for such
14 a proposal would, as a matter of practice,
15 consider alternative options and explain why they
16 had not been adopted (see environmental impact
17 circular).

18 "Thus Mr Drabble submitted it would be
19 possible and legitimate for Essex, Herts or
20 anybody else to make a case at an inquiry into an
21 application for planning permission for the wide-
22 space runway, referred to in paragraph 1140, that
23 the adverse effects revealed by the EIA were such
24 that planning permission should be refused, not
25 withstanding that it would frustrate national

1 policy.

2 "They could also argue that the environmental
3 effects of a different form of the runway were so
4 much more acceptable, notwithstanding that that,
5 too, would frustrate national policy."

6 So it is clear that the White Paper does not
7 authorise anything. The Secretary of State says
8 it does not preclude consideration of need. It
9 clearly does not preclude consideration of
10 environmental impact. Indeed, there had not been
11 an EIA before the White Paper. And so, when you
12 looked at those issues, it could be justified, be
13 legitimate, to weigh the balance against a white
14 paper proposal, even if it meant frustrating that
15 aspect of government policy.

16 A. Well, up to a point you and I are agreed. In
17 fact, I have said virtually what you have said in
18 the conclusions to my evidence. My
19 paragraph 17.2 recognises that:

20 "It is potentially open to a planning
21 authority to demonstrate that the local
22 environmental impacts revealed by an assessment
23 of the particular application could be such as to
24 justify the frustration of government policy."

25 As I say in the first sentence of

1 paragraph 17.2:

2 "The policies are the starting point for a
3 decision but they are not the decision
4 themselves."

5 What may be between us are shades rather than
6 principles and I think it may be important to say
7 that I understand why you have quoted to me what
8 Mr Drabble had to say in the court case but, of
9 course, his case was not accepted by the judge.
10 Mr Drabble lost his case because the judge then
11 went on to say, in paragraphs 225 to 229 -- in
12 225 he says that:

13 "The sting was in the tail of that submission.
14 It was only a partial answer to the concerns
15 which are expressed."

16 He then goes on to say that for two principal
17 reasons, effectively, very substantial weight was
18 attached to the policies in the Air Transport
19 White Paper such as:

20 "The dice would be loaded against opponents.
21 It would be very difficult, if not impossible, to
22 persuade an inspector to go against such a
23 weighty policy."

24 The two reasons were that it was expected that
25 the policies would be enshrined within the

1 development plan and, secondly, that they
2 themselves, the White Paper, would carry very
3 substantial weight because it is underpinned by
4 the very many reports and the extensive
5 consultation exercise. As a result the court
6 struck out paragraph 1140, as you know, of the
7 Air Transport White Paper.

8 Q. Just pausing there, I would not want to cross-
9 examine you on the reasoning of the judge or the
10 other paragraphs in this judgment which have to
11 be properly taken into account in understanding
12 its legal effect, that to be dealt with by
13 submission. But we can note, can we not, that
14 the view that was taken by the White Paper in
15 striking the balance was one that was taken in
16 the absence of any environmental impact
17 assessment? That is right, is it not, as a
18 matter of fact?

19 A. Sorry, you are putting a different point to me
20 now but I am very happy to address it. Did you
21 say in the absence of ...?

22 Q. That it was not a full environmental impact
23 assessment as to the proposal of maximising the
24 use of ...

25 A. Not a full, detailed environmental assessment of

1 the type which is normally accompanying a
2 planning application but there was a very
3 substantial assessment of environmental ...

4 Q. And clearly, if we are looking at the weight to
5 be attached to the White Paper, it could not have
6 taken into account any of the analysis or
7 information that arose out of the publication of
8 the White Paper?

9 A. That is true.

10 Q. We will come back to the substance in due course
11 when we come back to the legal submissions as
12 well in due course.

13 A. Perhaps we should accept by the same token that
14 it could and would have taken into account any
15 information that was available prior to the
16 formation of the White Paper. That seems to
17 follow. Insofar as there are new issues that
18 were not raised in the preparation of the Air
19 Transport White Paper, I agree they fall to be
20 examined.

21 Q. I am obliged. We will come on to all of those
22 matters in due course.

23 Let us turn then to the contents of the
24 statutory development plan. I think you have
25 already agreed with Mr Hill that none of the

1 three documents that make up that development
2 plan offer any encouragement to an expanded use
3 of Stansted.

4 A. That was not what I accepted from Mr Hill. I
5 accepted that there was no specific policy in the
6 development plan to support maximum use of the
7 runway. The policy certainly contained a number
8 of references within text and policy to matters
9 which accept the importance of the airport, the
10 importance of the employment that it generates,
11 but they do not contain specific policies to
12 support the individual planning application.

13 Q. Let us just see if we can get a taste of what
14 those policies do require. Have a look, for
15 example, at CD59 and the structure plan policy,
16 BIW9. Do you have that policy in front of you?

17 A. I do, thank you.

18 Q. And we can see that that is a policy which
19 requires any proposed aviation development to be
20 tested against criteria designed both to protect
21 the environment and residential amenity, and to
22 test any harm in respect of those matters against
23 economic need or benefit.

24 A. Yes.

25 Q. It is a criteria-based policy, is it not?

1 A. Yes. It is a slightly odd policy because it does
2 not set out thresholds for acceptance or
3 otherwise but it does draw attention to the
4 issues that would be addressed in relation to an
5 airport application.

6 Q. Of course, and we can identify what those issues
7 are, those criteria are. Firstly, obviously the
8 general planning policies for the area, and we
9 can come on to the local plan in a short while.
10 Then air travel needs. Just pausing there, it is
11 important we note the word "needs" rather than
12 just "demand", is it not? That is what the
13 structure plan says.

14 A. Yes.

15 Q. And then economic benefits to local and regional
16 businesses; and then impacts upon public health,
17 safety, noise, pollution, environmental
18 conditions, visual amenity, residential amenity;
19 all of those matters clearly material
20 considerations to be taken into account.

21 A. Yes, they are.

22 Q. Of course they are. Then we can look at, a few
23 numbers down, adequacy of surface access
24 arrangements. That is going to be for the early
25 autumn.

1 A. Yes.

2 Q. When we look at that policy it is clear that it
3 does not provide any endorsement, does it, for
4 any expanded use of Stansted? Rather it requires
5 the environmental impact of any proposal to be
6 considered against evidence of need or benefit.

7 A. Yes. There is no great significance with respect
8 to the point because it is not the sort of policy
9 that it addresses itself to a specific proposal.
10 It simply flags up the issues which would have to
11 be considered and, of course, it predates the Air
12 Transport White Paper and, of course, it is
13 likely to not be saved if the RSS is adopted.

14 It is also the policy against which the
15 District Council tested the 2001 application and
16 found conformity with the development plan.

17 Q. We will come on to, I think, all of those matters
18 in due course.

19 We can record also, can we not, that so far as
20 RPG9 is concerned that merely notes the existing
21 capacity, as it then was, of 15 MPPA and said
22 that it should be subject to a further study?

23 A. Yes. As you say, because it is part of the
24 development plan and I do not think it is in
25 evidence, it may just be helpful to say that

1 paragraph 1267 of RPG9 identifies that the long-
2 term future of Stansted is being examined in
3 SERAS. So it indicates, I think helpfully, that
4 there is a process involved leading to the
5 preparation of national policy which is likely to
6 be influential in determining the future of
7 Stansted Airport.

8 Q. And that is the study to which I was referring.
9 We will come on to that study again in due
10 course.

11 Finally and similarly, so far as the local
12 plan is concerned, that notes, does it not -- I
13 think it is in paragraph 16.1, it is CD57 -- that
14 planning permission has now been given for
15 25 MPPA but it does not --

16 MR BOYLAND: When you are referring to new documents I
17 would be grateful if you would just give us a
18 little time to get to them. Thank you.

19 MR STINCHCOMBE: Of course. If I have the reference
20 right, that notes that planning permission has
21 been granted, I think, for 25 MPPA but the local
22 plan does not, does it, contain any policy
23 calling for further growth?

24 A. No. Obviously insofar as the built facilities
25 that were approved in 2003 are concerned and also

1 technically form part of this application, we
2 know from the previous commission report that
3 they are consistent with the land use
4 designations in the local plan. But you are
5 right, the plan does not address itself to growth
6 beyond 25 MPPA.

7 Q. But it does have certain other general planning
8 policies, as alluded to in BIW9, which we would
9 have to take into account, and in particular I
10 have in mind GEN4 and ENV7. I think we will find
11 GEN4 starts on page 14 and goes on to page 15.

12 Do you have that in front of you?

13 A. I do, yes.

14 MR BOYLAND: Did you say GEN4?

15 MR STINCHCOMBE: GEN4, sir.

16 MR BOYLAND: I have that at page 16.

17 MR STINCHCOMBE: There we go. In any event, agree the
18 text, it is concerning good neighbours and it
19 says:

20 "Development and uses, whether they involve
21 the installation of plant and machinery or not,
22 will not be permitted where noise or vibrations
23 are generated or smell, dust, light, fumes,
24 radiation, exposure to other pollutants would
25 cause material disturbance or nuisance to

1 occupiers of surrounding properties."

2 Those are the kinds of material consideration
3 to which an aviation proposal can give rise?

4 A. It would include those considerations, yes.

5 Q. Noise, smell and pollutants.

6 A. Yes.

7 Q. And this tells us in terms that where a use
8 causes such material disturbance to such matters
9 then it would not ordinarily be permitted?

10 A. Yes.

11 Q. Right. If we turn on to page ... I hesitate to say
12 page numbers now, sir. In my version it is
13 page 28, but it is policy ENV7 in any event.

14 MR BOYLAND: It is page 32 in our copy.

15 MR STINCHCOMBE: Here we are concerned with the
16 protection of the natural environment:

17 "Development proposals that adversely affect
18 areas of nationally important nature conservation
19 concerns, such as sites of special scientific
20 interest or national nature reserves, will not be
21 permitted unless the need for the development
22 outweighs the particular importance of the nature
23 conservation value or site or reserve."

24 Again, that is obviously engaged in respect of
25 Hatfield Forest, is it not?

1 A. Yes.

2 Q. I am obliged. And we can see that it would not
3 be permitted if there is any adverse effect,
4 unless outweighed by the need.

5 A. Yes.

6 Q. That is helpful. I wonder then if we can put
7 aside the development plan and turn to the next
8 section of the cross-examination. You will be
9 glad to know we are making good and speedy
10 progress, so hopefully the programme will speed
11 up.

12 Turn on to the environmental impact
13 regulations and how such matters as we have just
14 discussed, and indeed some others, should be
15 assessed. We can agree, can we not, at the very
16 outset, that all of those considerations which
17 are contained within the development plan as
18 being material for us to look at, all of those
19 are exactly the kind of considerations that are
20 routinely assessed in environmental impact
21 assessments?

22 A. I think the ones that you have just highlighted
23 to me are. Obviously there will be other things
24 in the development plan which are not directly
25 relevant to environmental impact but may have a

1 planning relevance.

2 Q. Indeed, but the ones that I have just put to you,
3 for example, noise, air quality, surface access,
4 pollutants, those would all routinely be subject
5 to EIA assessment, would they not?

6 A. Yes, they would.

7 Q. And climate change also, would it not?

8 A. No.

9 Q. I wonder if we can go back to that Planning
10 magazine article quickly, just to see what that
11 identified. I appreciate it is only journalistic
12 description but just by way of overview. I think
13 it was CD385, was it not?

14 MR BOYLAND: Yes, it was.

15 MR STINCHCOMBE: Go to the third column on the first
16 page. Do you see the bottom paragraph, "The
17 range of subjects...?"

18 A. Yes.

19 Q. "The range of subjects analysed in the
20 environmental statements is expanding. As well
21 as traditional environmental issues [so these are
22 the traditional ones] such as air quality,
23 ecology, flood risk and effect on climate change
24 ..."

25 So that is then thought to be a traditional

1 subject to an EIA, yes?

2 A. That is what the article says, yes.

3 Q. And alongside that:

4 "EIAs have broadened their outlook and now
5 encompass everything from socio-economic impacts,
6 community evaluations, quality of life and health
7 effects to influences on tourism."

8 Yes?

9 A. That is what it says, yes.

10 Q. You will have seen, will you not, environmental
11 impact assessments which do look at all of those
12 matters?

13 A. I honestly do not think that I have, no.

14 Q. So be it. You would expect, would you not, there
15 to be some evidence and some analysis of socio-
16 economic impacts, and indeed there was in this
17 case, was there not?

18 A. I have certainly seen socio-economic effects
19 commonly in environmental assessment, yes.

20 Q. And also effects on community cohesiveness?

21 A. I do not think I have ever seen that in an
22 environmental assessment.

23 Q. You have seen quality of life assessments?

24 A. Not in an EIA, no.

25 Q. You have seen health impact assessments?

1 A. I have, although they are normally separate from
2 the EIA.

3 Q. And the same would be true then, I take it, of
4 the quality of life assessment? You have seen
5 them. Indeed, you have seen one in respect to
6 Stansted, not as part of the EIA but separate
7 from it?

8 A. I do not think I have seen one in respect of
9 Stansted.

10 Q. So be it. I am leaving aside climate change,
11 because you have parked something there and I am
12 going to come back to that in the fullness of
13 time, but we can just note that you say you do
14 not consider that properly to be part of the EIA.
15 We will come on to that in due course. Leaving
16 that aside, you do not suggest that these kinds
17 of impacts are immaterial planning concerns, do
18 you?

19 A. Which kinds do you specifically mean?

20 Q. Well, if a particular proposed development was
21 damaging in terms of its socio-economic impact or
22 damaging in respect of quality of life and
23 residential amenity or damaging in respect of
24 health or damaging to community cohesiveness, you
25 would not suggest that those damages are

1 immaterial planning considerations, would you?

2 A. You have put to me a basket of different headings

3 there, some I would accept and some I do not.

4 Certainly, for instance, residential amenity is

5 clearly an important consideration and one which

6 is often addressed, even in planning applications

7 which do not have environmental assessment.

8 I have never seen an environmental assessment

9 which looks at community cohesiveness. I am not

10 sure anybody would know how to undertake one and

11 I am not sure whether it would be identified

12 properly as an environmental effect of a

13 development. So it would vary from topic to

14 topic that you have put to me.

15 Q. I see. Well, perhaps we can come back to some of

16 those matters in the light of national planning

17 policy in due course. But when we look at those

18 kind of impacts, are they the kind of generalised

19 concerns about which you spoke earlier?

20 A. Some of them are, yes.

21 Q. I see. When we look at those generalised

22 concerns, we have to recall your words to

23 Planning magazine -- if they are your words

24 rather than some PR spokesperson -- that there

25 has to be an assessment of all of the

1 environmental effects that a project may cause.
2 You do not try and minimise those effects, do
3 you?
4 A. Correct.
5 Q. It is important, is it not, that if we know that
6 there is an effect and traditional methodologies
7 may leave those to be undisclosed or unweighed,
8 then we have to be astute to make sure that we do
9 not leave them out of account?
10 A. If it is a likely significant environmental
11 effect it needs to be assessed but otherwise, no.
12 Q. If and insofar as those kinds of effects do fall
13 to be considered by an environmental impact
14 assessment, I think you will agree with me that
15 we should look at not just the direct effects --
16 if we need to go to the document we can -- but
17 also indirect, secondary and cumulative effects.
18 That is right, is not?
19 A. Yes. Your question, sorry, is based on an
20 hypothesis that it is right to look at these
21 issues. You know that I do not accept that.
22 Subject to that point, for environmental
23 assessment, yes, it can be relevant to look at
24 indirect, cumulative and other effects.
25 Q. Can be relevant? I think that is the requirement

- 1 of the Town and Country Planning Environmental
2 Impact Assessment Regulations, is it not? CD309.
- 3 A. It is certainly commonly undertaken.
- 4 Q. Commonly undertaken. I am obliged. So it is
5 indirect, secondary and cumulative alongside
6 direct?
- 7 A. Yes. I have seen each of those addressed and it
8 may well vary from topic to topic whether it is
9 appropriate to do so.
- 10 Q. And the purpose of that requirement in the
11 regulations is to ensure that there is an
12 holistic approach that takes account of all the
13 totality of the impacts?
- 14 A. We need to be careful because the requirement is
15 to assess only likely significant environmental
16 effects rather than all environmental effects.
- 17 Q. It is right, is it not, that we have to look at
18 the indirect, direct, secondary and cumulative to
19 see whether those are significant effects
20 cumulatively?
- 21 A. We do not have to but for some topics it may be
22 appropriate to do so.
- 23 Q. And as you discussed with Mr Hill earlier today,
24 that was undertaken in this case?
- 25 A. For some topics.

1 Q. I think it is also right, is it not, that so far
2 as cumulative effects are concerned they are
3 defined to include all impacts. I will read it
4 out slowly. If I have the definition wrong you
5 can either correct me or if we need to go to the
6 source material we can try and uncover it.

7 A. Would you mind just telling me where the
8 definition is from?

9 Q. Actually, I cannot tell you where the definition
10 is from. It is a definition that is referred to
11 in our proofs of evidence and while searching on
12 the internet over the weekend I found it repeated
13 in numerous places but I have not found its
14 source, which is one of the reasons I am putting
15 it to you in the way I am to see whether we can
16 agree it and, if we can agree it, seek to
17 identify the source in due course. The
18 definition that is in our proof of evidence on
19 the sustainability assessment approach is that:

20 "Cumulative effects have been defined to
21 include all impacts which result from incremental
22 changes to environmental parameters brought about
23 by ..."

24 A. Sorry, you are going too fast for me.

25 Q. I do apologise.

1 A. Thank you.

2 Q. "... brought about by other past, present or
3 reasonably foreseeable actions."

4 Now you have written it down, do you recognise
5 it?

6 A. No, I do not.

7 Q. You do not?

8 A. And I am also reluctant, I am afraid, to accept
9 it from you.

10 Q. I understand. Overnight we will see if we can
11 bottom out the source of it and perhaps we can
12 come back to that if we need to.

13 With the caveat that you do not at the moment
14 accept it as being a definition, I wonder if I
15 can ask you some questions on the assumption that
16 I can identify its source and that in due course
17 you might accept it. I understand the caveat but
18 see if --

19 A. We can certainly try, yes.

20 Q. If and insofar as that is the appropriate
21 definition of cumulative effect, what it is is a
22 paradigm warning against salami slicing of
23 individual incremental impacts, is it not? It
24 says you have to look at past, present and
25 reasonably foreseeable together.

1 A. Yes. That is one of the reasons why I am really
2 not very comfortable with it because I am not
3 familiar with cumulative environmental assessment
4 looking at past effects. Past effects are
5 wrapped up in the identification of a baseline.
6 It is not usual to combine the effects of
7 previous developments with the forecast effect of
8 future development.

9 Q. I understand that caveat and, again, we may come
10 back to that if we need to tomorrow morning. But
11 as it stands, if that is the right definition,
12 then that implies, does it not, that if there is
13 any additional impact arising from this proposal,
14 on top of other impacts that have already been
15 generated by Stansted, then you should look at
16 the totality and add those new additional impacts
17 on to the existing.

18 A. Well, we are getting into a slightly theoretical
19 situation where I have not accepted the
20 hypothesis of the questions.

21 Q. Yes, I understand.

22 A. If the hypothesis is correct, then that is right
23 but I do not understand that that is the way in
24 which environmental assessment is properly
25 undertaken.

1 Q. I just wonder if we can agree something in
2 respect of perhaps a commonsense planning
3 approach to this and take it out of the
4 theoretical and the world of pure definitions.
5 Let us have a think about the noise impact of an
6 aviation proposal and imagine a scenario when,
7 for example, a decision maker or an inspector had
8 reported on a planning inquiry and led the local
9 community to believe that there would be noise or
10 usage only at a particular threshold; and then
11 the Secretary of State had gone to Parliament and
12 confirmed that it would not go beyond that; and
13 then another application had come in and it had
14 gone beyond that and there was increased noise;
15 and you got up to the level of the kind of
16 environmental catastrophe that had previously
17 been described by that inspector. It is possible
18 in those kind of situations that local residents
19 might be actually sensitised to noise, might they
20 not?

21 A. They might be sensitised or desensitised?

22 Q. Sensitised. They might be very sensitive to any
23 additional impact because of the past history of
24 environmental degradation which they had
25 suffered.

1 A. I am sorry, I am not happy to agree that. Noise
2 is perceived in a number of different ways but it
3 is not, in my opinion, perceived as a result of
4 history. It is perceived as a result of what is
5 happening in the air or on the ground.

6 Q. But you will, I am sure, have been to numerous
7 planning applications where noise evidence has
8 been considered and where you have come across
9 communities which have been sensitised to noise?

10 A. I cannot immediately recall such a situation.
11 There is a standard approach to these things
12 which is to look at current position by assessing
13 a baseline to see whether or not that baseline
14 would be affected by consented development,
15 either of the subject site or of other relevant
16 sites nearby. The proper approach is to consider
17 whether environmental thresholds are being
18 crossed in an unacceptable way, either through
19 what exists at the moment or what is proposed
20 additionally.

21 Q. We will come on to the baseline in the next
22 section of the cross-examination, and if we can
23 find for you the source of the definition we can
24 perhaps revisit this area for a short while
25 tomorrow.

1 In any event you can agree this, can you not,
2 in the light of the comments in particular that
3 are attributed to you in Planning magazine, that
4 we do have to look at the totality of the impacts
5 upon residential amenity and the environment and
6 do have to be astute to make sure that they are
7 not minimised and are all properly weighed in the
8 balance?

9 A. I agree with that broad approach. If we are
10 asking ourselves about environmental assessment,
11 we have got to look at the likely significant
12 effects but I certainly accept that we should
13 look objectively at all material considerations.

14 Q. And I think you have already agreed that if
15 traditional methodologies miss out some of those
16 impacts, we have to be astute to look carefully
17 to make sure they are not avoided and evaded and
18 ignored?

19 A. Yes. All proper material considerations should
20 be taken into account.

21 Q. Right. And it is also right, is it not, that
22 some of these kinds of consideration are not so
23 readily susceptible to quantitative rather than
24 qualitative assessments?

25 A. Correct.

1 Q. For example, socio-economic impacts?

2 A. Some things are quantifiable, some things are
3 judgmental, yes.

4 Q. Indeed. You have told us in your proof of
5 evidence, in paragraph 2.2 at the very outset,
6 that you have to be able to make planning
7 judgements.

8 A. Yes.

9 Q. So, for example, planning judgements might need
10 to be made in respect of the impact on
11 residential amenity of tens of thousands more
12 noise events a year?

13 A. Yes.

14 Q. That is helpful. Let us come on to the baseline
15 and not just the baseline but the projections for
16 the 35 MPPA world. When we are looking at the
17 baseline and the projections, assuming planning
18 permission is granted for the proposal, this is
19 the paradigm example of where we have to be
20 astute not to minimise the impact of those
21 proposals. This is the mechanism by which we
22 assess the difference between a no-scheme world
23 and a scheme world, is it not?

24 A. Yes.

25 Q. And that requires us, as I understand it, and

1 perhaps you can confirm for me, carefully to
2 assess the impact on the environment and on the
3 residential amenity of the airport as it would
4 operate with the conditions staying the same, and
5 then comparing that against the impact of the
6 airport as it would operate with the conditions
7 changed?

8 A. Yes.

9 Q. So that we can test the difference between the
10 two worlds, the baseline and the with permission
11 world. Right.

12 Now, the two conditions which are the subject
13 of this inquiry and which you seek to vary, they
14 currently restrict respectively the number of
15 passengers throughput at Stansted to 25 million
16 per year and also restrict the number of air
17 traffic movements to 241,000 per year?

18 A. Yes.

19 Q. As I understand it, and I am sure we can agree
20 this, BAA propose to increase the number of air
21 traffic movements (ATMs) to 264,000 per year?

22 A. Yes.

23 Q. And they seek, by the application at least, to
24 remove the condition on passenger movements per
25 annum. That is the way the application has been

1 made.

2 A. That is correct.

3 Q. So that there would be no upper limit on such
4 movements if that application was approved in the
5 form originally applied for?

6 A. Not unless a limit needs to be imposed.

7 Q. And although you now suggest a cap by condition
8 of 35 million passengers per annum, that cap
9 would have to be justified, would it not?

10 A. Yes, it would.

11 Q. Is it your case that it is justified?

12 A. Yes.

13 Q. It is? And that is presumably by reference to
14 the balance that we have talked about of
15 environmental or residential amenity harm against
16 the evidence of need or benefit?

17 A. It is not actually, no. The reason that I take
18 that view is that -- sorry, to address the point
19 that you first made. I do think the sensitivity
20 tests that were undertaken to 40 MPPA identified
21 harm sufficient to warrant the imposition of the
22 condition. But the environment assessment did
23 not assess all topic areas against the
24 sensitivity of 40 MPPA. That assessment was not
25 before the council and is not before this

1 inquiry.

2 Q. I wonder if we can take it in stages. I do not
3 think we are likely to disagree but we may, so I
4 had better be clear upon what the case of the
5 developer is. It originally applied to remove
6 the limitation completely. It is now proposing a
7 cap of 35 million passengers per annum. It
8 accepts that that cap can only be imposed if it
9 is justified.

10 A. Yes.

11 Q. That presumes, does it not, that it is
12 justifiable to impose a cap as a matter of
13 principle? Must do.

14 A. Well, it can be justifiable to impose a cap.

15 Q. You cannot justify a cap of 35 million if it is
16 not justifiable in principle, can you? So it
17 does presume that it is justifiable in principle
18 to have that kind of cap.

19 A. Well, it assumes that it can be justifiable. It
20 is not for the applicant, the appellant, to
21 determine the conditions that need to be imposed.

22 Q. No, but you are arguing that this particular cap
23 at that level is justified?

24 A. Yes.

25 Q. It is right that the overall balance that we are

1 seeking to strike at this inquiry into this
2 proposal is a balance of environmental harm or
3 harm to residential amenity against economic
4 benefit or need, yes?

5 A. Yes.

6 Q. So, in order to be justified, any condition in
7 respect of that cap would have to take account of
8 that balance as properly weighed on the evidence
9 before this inquiry?

10 A. That is one of the factors it would have to take
11 into account, yes.

12 Q. And it is right then that, as a matter of
13 principle, the inspectors or the Secretary of
14 State, having accepted that approach, might weigh
15 that balance in favour of 35 million or a
16 different figure?

17 A. There are a number of judgements which the
18 inspectors are required to make in their
19 recommendations to the Secretary of State. One
20 of them is whether this particular condition
21 should be imposed in this form or in a different
22 form.

23 Q. Or in a different form?

24 A. Yes.

25 Q. And so it would be perfectly legitimate if the

1 inspectors or the Secretary of State weighed that
2 balance difference for a different condition or
3 cap to be proposed, perhaps at 30 million instead
4 of 35?

5 A. That is clearly a matter for the inspectors.
6 They will apply the tests set out in relation to
7 conditions.

8 Q. Because 30 million is the proposal being put
9 forward, I think, by the consultative committee,
10 is it not?

11 A. Yes.

12 Q. Indeed, in addressing that same balance they
13 could come to the same view as Graham Ayre and
14 25 million would be the threshold of catastrophe,
15 could they not?

16 A. I look forward to that part of your cross-
17 examination.

18 Q. But as a matter of principle they could, could
19 they not?

20 A. I would be grateful if you did not put a question
21 to me like that because it invites me to discuss
22 whether that is what Graham Ayre said or not, and
23 it was not what he said. If you want to put the
24 question to me in a straightforward way, I will
25 answer it.

1 Q. As a matter of principle it would be possible, of
2 course, for balance to be weighed by the decision
3 maker in the way that you have agreed has to be
4 undertaken and come up with an appropriate cap of
5 25 million. That would be perfectly possible?

6 A. Anything is theoretically possible. That would
7 effectively mean that planning consent is refused
8 to change the condition. The condition stays as
9 it is. Of course, as I have accepted in my
10 evidence, that is a possibility.

11 Q. You say that anything would be possible. I am
12 not entirely sure that it would be possible to go
13 beyond and above 35 million would it? If a cap
14 of 35 is justified, so you would say, there is no
15 assessment of what the environmental amenity harm
16 would be above 35 million if you could justify it
17 being considered acceptable.

18 A. It is slightly odd that you are putting this
19 question to me. There are some assessments of
20 the environmental effect. There were some
21 sensitivity tests undertaken within the ES up to
22 40 MPPA but that was not done comprehensively.

23 Q. No, it was not done comprehensively above 35, was
24 it?

25 A. Sorry?

1 Q. There was not an environmental impact assessment
2 done comprehensively above 35 million, was there?

3 A. Correct.

4 Q. So the inspectors can record that there is not
5 sufficient evidence to demonstrate that a higher
6 throughput would be environmentally acceptable.

7 A. That is my view, yes.

8 Q. That is helpful. Just before we move on -- and
9 we will come back to this in due course -- you
10 have agreed as a matter of principle that,
11 depending upon the evidence that is heard and the
12 assessment of that evidence, it is open to the
13 decision maker to balance the harm of a given
14 throughput against the economic benefit or need
15 of additional throughputs and come to a
16 conclusion as to what is the appropriate cap,
17 yes?

18 A. Well, first come to a conclusion as to whether or
19 not planning consent should be granted and then,
20 second, to consider what conditions should be
21 imposed against the guidance for the imposition
22 of conditions.

23 Q. In undertaking that process of addressing the
24 harms that would be caused by any given
25 throughput and the economic justification for

1 inflicting such harms, what the Secretary of
2 State and the inspectors are actually doing is
3 trying to determine what is the best use of the
4 runway, are they not? (Pause)

5 A. I may be happy to agree with you but could you
6 elaborate a little further?

7 Q. I am just putting forward a simple proposition.
8 We can come back to it in due course if need be.
9 In assessing what is the appropriate maximum
10 level of throughput to put through Stansted G1,
11 by reference to the environmental impacts on the
12 one hand, along with the residential impacts, and
13 the evidence of economic need and economic
14 benefit, in coming to that conclusion, what in
15 terms the inspectors and Secretary of State are
16 doing is coming to a view as to what the best use
17 of the existing runway is.

18 A. I think they are coming to a view as to what the
19 maximum acceptable use of the runway may be.

20 Q. I see. Let us just come on to that issue that I
21 think you wanted to comment upon which is what
22 Graham Ayre meant by what Graham Ayre said, and
23 that is in CD31.1. In particular, I think it is
24 going to be paragraph 12.12, is it not, of his
25 report?

1 MR BOYLAND: Do you know which volume, Mr Stinchcombe?

2 MR STINCHCOMBE: I am afraid I do not. Perhaps I can
3 put to you the words that I have. You are
4 obviously well aware of the words and you had a
5 rebuttal that you wanted to make in any event, so
6 perhaps you can ...

7 MR BOYLAND: No, Mr Stinchcombe, I want the actual
8 reference so that we can make a note of it.

9 MR STINCHCOMBE: Of course, sir. I think we are
10 struggling to identify it. Sir, perhaps we can
11 find the extract. Maybe we have it in the first
12 proof of evidence from SSE. Perhaps we can find
13 it there and then if it is an incomplete quote --

14 MR BOYLAND: If it is referenced then that would be
15 fine. I would certainly rather work from the
16 original than from a quote.

17 MR STINCHCOMBE: Yes, of course, sir. Paragraph 21.10
18 of SSE1A.

19 MALE SPEAKER: Chapter 25, paragraph 12.12.

20 MR STINCHCOMBE: Chapter 25, that is the reference,
21 thank you very much. I had the right paragraph
22 but no idea at all as to which chapter it was in.
23 Are you there, Mr Rhodes?

24 A. Yes, go ahead, thank you.

25 Q. I will just put to you a couple of quotes and

1 then hear what contextual remarks you wanted to
2 make on it because you indicated that you wanted
3 to. So you see about two-thirds of the way down
4 towards the right-hand side, paragraph 12.12, "I
5 would not be debasing the currency". Do you see
6 that, Mr Rhodes?

7 A. Yes, I do.

8 MR STINCHCOMBE: Do you see that, sir?

9 MR BOYLAND: Yes, thank you.

10 MR STINCHCOMBE: "I would not be debasing the currency
11 if I expressed my judgement that the development
12 of an airport at Stansted with a capacity in
13 excess of 25 MPPA, and requiring the construction
14 and operation of a second runway and all the
15 structure and operational paraphernalia of a
16 modern international operational airport as we
17 know the animal in 1984, would constitute nothing
18 less than a catastrophe in environmental terms."

19 Just pausing there, of course we see that in
20 the context of the 1983-84 inquiry and we see it
21 is made in the context also of anticipating a
22 second runway and the structure and operational
23 paraphernalia. But it does say, does it not,
24 that he would not be debasing the currency if in
25 the light of those matters he expressed a

1 judgement that the development of an airport at
2 Stansted with a capacity in excess of 25 MPPA
3 would constitute an environmental catastrophe?

4 That is what he says.

5 A. That is part of what he says.

6 Q. And your qualification, just so the inspectors
7 have the full picture?

8 A. My qualification is to say that you are putting
9 an extremely bad point to me and I was very
10 surprised to see it in the evidence of SSE,
11 particularly repeated so often.

12 We only have to cast our eye to the top of the
13 paragraph to see what the inspector is addressing
14 himself to is the construction and operation of a
15 second runway at Stansted and he is particularly
16 concerned in that paragraph with the landscape
17 impacts of the construction of the second runway.
18 We can find other references to confirm that the
19 construction of a second runway at Stansted at
20 that time was thought to involve the development
21 of four terminals, and it is that scale of
22 development which the inspector is expressing a
23 view about. The inspector anticipated and was
24 given evidence at that time that the capacity of
25 the single runway might be in the region of

1 25 MPPA. For your reference, that is chapter 50,
2 I believe paragraph 4.5.

3 What the inspector is addressing himself to
4 here is not the maximum use of the existing
5 runway but it is the construction of a second
6 runway. That is the context in which the
7 Secretary of State recorded the inspector's views
8 in the decision letter, at paragraphs 52 and 53,
9 quite clearly concerned with the construction of
10 a second runway.

11 What the inspector actually said -- if we look
12 at chapter 50, paragraphs 9.3 to 9.5 which is the
13 seventh of these volumes. I think in due course
14 it would helpful for the inspectors to read 9.1
15 to 9.7. One thing to understand about the
16 inquiry was that unusually, as the inspector
17 records, he was asked not only to consider the
18 application before him for 15 MPPA but he was
19 also asked to reach conclusions about the
20 potential for further expansion in the future,
21 and it was in that context that he drew some
22 conclusions.

23 In chapter 50, paragraph 9, we know that he
24 accepted expansion up to 15 MPPA, and then in
25 paragraphs 9.3 to 9.4 he looked at expansion to

1 25 MPPA which he understood to be the capacity of
2 the single runway. He said in 9.3:

3 "Although development beyond 15 MPPA will tend
4 to exacerbate a number of the consequences of
5 airport development, there is no matter that
6 would justify the imposition of a limit on growth
7 at such a level of capacity with the result that
8 important resources would still be under-utilised
9 [by which he meant the runway].

10 "There are positive advantages to be gained by
11 expressly identifying Stansted as an airport that
12 will be developed up to the capacity of a single
13 runway if and when demand materialises."

14 Then we can see from the next heading that
15 expansion beyond 25 MPPA was directly associated
16 with the construction of a second runway and all
17 the additional facilities that go with that. To
18 that prospect, the prospect of a second runway,
19 he drew some very strong conclusions, as you have
20 identified, like the environmental consequences.

21 Q. And indeed, the local residents assembled here
22 today can see that the inspector, looking at an
23 expansion beyond 25 million passengers per annum,
24 then said that there were overwhelming reasons
25 why a second runway should not be constructed.

1 A. A second runway? He did say that, yes.

2 Q. Yes, indeed, and that will be in due course
3 tested by a subsequent application.

4 A. Yes, but the conclusions that are most relevant
5 to this application are the ones that I have read
6 to you. The inspector saw no sense in
7 constructing the runway and then seeking to
8 restrict its capacity artificially. The
9 inspector's view was that there were positive
10 advantages to be gained by expressly identifying
11 that the airport will be developed up to the
12 capacity of the single runway. We now know that
13 to be 35 MPPA.

14 Q. Just pausing there, I wonder if you could turn to
15 paragraph 9.7 of chapter 50:

16 "Any decision that expansion should take place
17 at Stansted up to the capacity of a single runway
18 must be entirely contingent upon securing the
19 position that a second runway will not be
20 constructed and that the safeguard and protection
21 over most of the safeguarded area will cease."

22 That is what he said then, was it not?

23 A. Yes.

24 Q. An important part of the planning history?

25 A. It is an important part of the planning history,

1 more relevant to a discussion about the second
2 runway than it is to maximum use. But as a
3 matter of fact the safeguarding of land for the
4 construction of the second runway was withdrawn
5 contemporaneously with the approval of the
6 expansion to 15 MPPA in 1985.

7 There is just one point to add for the sake of
8 clarity. With the exception of safeguarding of
9 Molehill Green, because the inspector had
10 understood -- and I could take you to the
11 references -- that in order to make maximum use
12 of the existing runway to 25 MPPA, it would have
13 been necessary to construct a second terminal and
14 that was likely to be on land at Molehill Green.
15 Therefore after the grant of planning consent, or
16 at the same time, a new safeguarding direction
17 was put in place, which I have referred to in my
18 evidence, to safeguard land at Molehill Green for
19 the construction of a second terminal. That
20 explains why BAA own 64 properties in the
21 vicinity of Molehill Green. It is a direct
22 result of that safeguarding.

23 So the inspector was not only prepared to
24 think it appropriate and conclude that maximum
25 use of the runway was a sensible idea; he was

1 prepared to contemplate that that would involve,
2 as he identified, the destruction of Molehill
3 Green. He then drew his line very clearly at the
4 development of the second runway.

5 Q. Just one final question, I hope, on this part of
6 the planning history. You have entered your
7 caveats; we nonetheless see some very strong
8 language used by Sir Graham Ayre here. He says
9 he will not be debasing the currency if he
10 expresses his judgement that the development of
11 an airport in excess of 25 million passengers per
12 annum would constitute nothing less than a
13 catastrophe in environmental terms.

14 A. I am sorry, you are being far too selective by
15 missing out words which really are quite
16 important, immediately after 25 MPPA:

17 "And requiring the construction and operation
18 of a second runway."

19 If you are going to put the quotation to me it
20 is only fair to put it in full. That was the
21 particular harm which Graham Ayre identified
22 would, in his judgement, constitute an
23 environmental catastrophe.

24 Q. But the environmental harm would also include,
25 would it not, all of the impacts of the

1 additional number of movements in terms of noise
2 or pollutants?

3 A. That is not what Graham Ayre said in this
4 paragraph. If you look at paragraph 12.12 in its
5 entirety, the particular harm that he is
6 identifying is the landscape harm over an
7 attractive area of countryside that he regarded
8 as unacceptable. He may have had views about the
9 noise harm but he does not express them. The
10 harm he expresses is the landscape impact of the
11 construction of a second runway.

12 Q. We can see at 12.13 that in light of these
13 matters he takes so strong a view that if he
14 believed, as many do, that a ground for planning
15 permission for an expansion at Stansted to a
16 capacity of 15 million would lead inextricably to
17 unlimited and unidentifiable airport development
18 in the future to an unknown capacity he would,
19 without hesitation, unequivocally recommend the
20 rejection of BAA's current application.

21 A. Yes.

22 Q. And you do seek a removal entirely of the
23 condition on MPPA?

24 A. Yes, I do. I actually believe that that is
25 directly consistent with Graham Ayre's

1 conclusion, that it would not make sense to
2 deliberately under-use such an important
3 resource. The harm he is concerned with, again,
4 in this additional paragraph that you have drawn
5 my attention to, is further unlimited and
6 unidentifiable airport development. As you know,
7 the application does not involve the expansion at
8 all physically of the airport into the
9 countryside.

10 Q. And you also in due course will be advocating a
11 second runway, which he firmly held against?

12 A. Yes, and that is a matter which you and I may
13 debate at another time.

14 MR STINCHCOMBE: Sir, is that a convenient moment to
15 stop?

16 MR BOYLAND: It is if you are going to change to a
17 different topic?

18 MR STINCHCOMBE: Yes, sir.

19 MR BOYLAND: In that case it is. Thank you very much.
20 Just on timing, you said at one stage you thought
21 we were making fairly good progress. Have you a
22 feel for how much longer you are likely to be?

23 MR STINCHCOMBE: I said at the outset that I would be
24 dealing with 11 topics. I am halfway through the
25 fifth one. So, much quicker than my worst

1 estimate. I would still hope to be finished
2 probably early part of tomorrow afternoon.

3 MR BOYLAND: Very well, that is helpful. Is there
4 anything else before we adjourn? Thank you.

5 In that case the inquiry is adjourned until
6 10.00 am tomorrow. Thank you.

7 (5.00 pm)

8 (Inquiry adjourned until 10.00 am

9 on Wednesday, 13th June 2007)

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